United States Court of Appeals

for the Second Circuit

APPENDIX

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74-2352

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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P/S

DOCKET NO. 74-2352

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs-Appellants,

-against

THE CITY OF NEW YORK, et al.,

Defendants-Appellees.

APPENDIX ON APPEAL

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UNITED STATES COURT OF APPEALS
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RELEVANT DOCKET ENTRIES

Date	Proceeding
January 17, 1974	Complaint filed.
February 19, 1974	Summons with Marshal's return filed.
March 21, 1974	Answer of Group Health Incorporated filed.
April 18, 1974	Social Service Employees Union and Social Service Employees Union Welfare Fund Motion to Dismiss Complaint and Supporting Affidavit filed.
April 23, 1974	Answer of The City of New York, Abraham Beame, Harry Bronstein, New York City Health and Hospitals Corporation, New York City Off-Track Betting Corporation and Board of Education filed.
April 24, 1974	Answer of Associated Hospital Service, Inc. and United Medical Service, Inc. filed.
April 25, 1974	Answer of United Federation of Teachers and United Federation of Teachers Welfare fund filed.
April 25, 1974	Plaintiffs' Motion and Supporting Affidavit for Extension of Time to Make Motion for Class Determination filed.
April 30, 1974	Answer of New York City Housing Authority filed.
May 16, 1974	Plaintiffs' Affidavit in Opposition to Motion to Dismiss filed.
May 17, 1974	Affidavit of K. Randlett Walster filed.
July 2, 1974	Motion of Group Health Incorporated to Dismiss Complaint filed.
October 10, 1974	Order of Dismissal filed.
October 11, 1974	Notice of Appeal filed.
October 22, 1974	Affidavit of Gerald Barre in Support of Motion to Dismiss filed.
October 23, 1974	Letter of Hon. Whitman Knapp to Counsel dated June 26, 1974 and filed pursuant to Stipulation Modifying the Record.
October 23, 1974	Affidavit of Leo Gruskin dated July 10, 1974 filed pursuant to Stipulation Modifying the Record.
October 23, 1974	Affidavit of David Fisher dated July 10, 1974 and filed pursuant to Stipulation Modifying the Record.

Complaint

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated,

Plaintiffs,

- against -

THE CITY OF NEW YORK; ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND,

Defendants.

----------x

COMPLAINT
CLASS ACTION

74 Civ 304
Knapp

Plaintiffs, by their attorneys, Rabinowitz, Boudin & Standard, Esqs., for their complaint allege:

Complaint

I. JURISDICTION

1. This suit is an action in equity to redress violations of an Act of Congress known as the "Civil Rights Act of 1964," 42 USC § 2000e, et seq., an Act of Congress known as the "Civil Rights Act of 1866," 42 USC § 1981, et seq., and the Fifth and Fourteenth Amendments to the United States Constitution. Jurisdiction of this Court is invoked pursuant to 42 USC § 2000e-5(f)(3), 42 USC § 1983 and 28 USC 1343(3). This Court has pendent jurisdiction of related claims arising under the Constitution and laws of the State of New York, the Administrative Code of the City of New York, and New York City Mayoral Executive Order No. 71, April 2, 1968, as amended by Executive Order No. 23, August 24, 1970.

II. Class Action Allegations

2. Plaintiffs bring this action as a class action pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

3. The class the plaintiffs represent is composed of (a) all female employees of the City of New York, including but not limited to its departments, divisions, bureaus, boards, commissions, agencies, corporations, institutions and related authorities and public benefit corporations, but spe-

cifically excepting the Board of Higher Education, (collectively referred to herein as the "City") who are now employed by the City, who were so employed at any time from April 22, 1968 to the date of this complaint, and who will be so employed during the pendency of this action, and who, at any time during such employment, were capable of becoming pregnant or did become pregnant; and (b) males employed by the City during the same period of time, who, at any time during this period had a wife or female dependent capable of becoming pregnant or who became pregnant.

A. The class, consisting of over 100,000 individuals is so numerous that the joiner of all members is impractical.

B. Plaintiffs' claims and interests do not conflict with the interests of any other class members.

(1) Upon information and belief, on or about December 30, 1973, female employees of the City University of New York instituted a class action in the United States District Court for the Southern District of New York, entitled Melani, et al. v. Board of Higher Education of the City of New York, Docket No. 73 Civ. 5434. This action charges the Board of Higher Education with discrimination

in terms and conditions of employment on the basis of sex. Plaintiffs in the instant action make no claims against the Board of Higher Education thus the class in Melani and the instant class are discrete.

(2) Upon information and belief, on or about July 2, 1971, female employees of the New York City Board of Higher Education instituted an action in the United States District Court for the Southern District of New York, entitled Danielson, et al. v. Board of Higher Education, et al., Docket No. 71 Civ. 2985. This action challenges the maternity leave policy of the Board of Higher Education. Plaintiffs in the instant action make no claims against the Board of Higher Education, thus the class in Danielson and the instant class are discrete.

(3) Upon information and belief, on or about July 26, 1971, the female employees of the City's Department of Social Services and the Board of Education, instituted a class action in the United States District Court for the Southern District of New York entitled Monell, et al. v. Department of Social Services of the City of New York, et al., Docket No. 71 Civ. 3324. This action sought damages and an

injunction against enforcement of the maternity leave policy of the Board of Education and the Department of Social Services. The class in the instant action includes the class described in Monell. Plaintiffs here also seek damages for the imposition of discriminatory leave policies challenged in Monell, so that the relief requested in this action is complementary with that sought in Monell.

C. The interests of the class are adequately and fairly represented by plaintiffs. Plaintiffs are employed by the City. At various times from April 22, 1968 to the present, the female plaintiffs and the wife of the male plaintiff became pregnant and as a result these plaintiffs have been or are now subjected to discrimination with respect to the terms and conditions of employment on the basis of sex.

D. Common questions of law and fact exist affecting the rights of the members of the class. The practices of the defendants alleged herein have been and are directed uniformly and routinely to all members of the class and have deprived each member of the class of equal employment opportunities.

E. Defendants have acted and have refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

III. THE PARTIES

A. Plaintiffs

4. Plaintiff Women in City Government United (referred to herein as "WICGU") is an unincorporated employee organization composed of females employed by the City. WICGU was formed to assist females in obtaining equality in the terms and conditions of their employment. WICGU's principal place of business is Post Office Box 1153, Church Street Station, New York, New York 10008.

5. Plaintiff Barbara Robertson is a female citizen of the United States residing in Englewood, New Jersey. She has been employed by the defendant Board of Education since February 8, 1971, in the Bureau of Management Information and Data Processing. In connection with her employment she is insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and

Blue Shield Basic and Major Medical. Plaintiff is a member of District Council 37, American Federation of State, County, and Municipal Employees (referred to herein as "D.C. 37"), and is entitled to benefits under the D.C. 37 Health and Security Plan. Plaintiff was required by her employer to commence maternity leave December 11, 1972. She was hospitalized from January 1, 1973 through January 6, 1973. She gave birth January 2, 1973, and returned to work on August 6, 1973.

6. Plaintiff Leslie F. Boyarsky is a female citizen of the United States residing in the City and State of New York. Plaintiff Boyarsky was at all times relevant to this complaint employed by the defendant Board of Education, Department of Management Information and Data Processing. In connection with her employment she was insured under the City's health insurance plans with coverage under Blue Cross and Group Health Incorporated. Plaintiff Boyarsky was at all times relevant to this complaint a member of D.C. 37, and was entitled to benefits under the D.C. 37 Health & Security Plan. Plaintiff was required by her employer to commence leave March 1, 1973. She was hospitalized from March 7, 1973 through March 10, 1973. She gave birth March 7, 1973 and has as yet not returned to work.

7. Plaintiff Jacquelin Gross is a female citizen of the United States, residing in the City and State of New York. She has been employed by the defendant Board of Education, Department of Management Information and Data Processing, since February 1970. In connection with her employment, she is insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and Group Health Incorporated (GHI Type E) Plan. Plaintiff Gross is a member of D.C.37 and is entitled to benefits under the D.C.37 Health and Security Plan. In the fall of 1973, plaintiff Gross became pregnant. She experienced complications in connection with her pregnancy and was required by her physician to remain at home from November 12, through November 19, 1973. She was hospitalized December 6 through December 9, 1973 for a miscarriage. She returned to work January 8, 1974.

8. Plaintiff Arlene Friedman is a female citizen of the United States residing in the City and State of New York. Plaintiff Friedman is now and at all times relevant to this complaint was employed by the defendant Board of Education

as a public school teacher. In connection with her employment she is insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and Blue Shield Basic and Major Medical. Plaintiff is a member of the United Federation of Teachers and is entitled to benefits from the United Federation of Teachers Welfare Fund. Plaintiff was required by her employer to commence maternity leave September 20, 1972. She was hospitalized from November 2, 1972 through November 5, 1972. She gave birth November 2, 1972 and returned to work on January 2, 1973.

9. Plaintiff Robert Sussman is a male citizen of the United States residing in the City and State of New York. Since September 1, 1961, plaintiff Sussman has been employed by the defendant Board of Education as a public school guidance counselor. In connection with his employment, plaintiff Sussman and his wife, Diane Sussman, are insured under the City's health insurance plans. Prior to October 1, 1973, plaintiff and his wife were covered under Blue Cross and Blue Shield Basic and Major Medical. Beginning October 1, 1973, the Blue Shield coverage was taken over by Group Health Incorporated (GHI Type E). Plaintiff Sussman is a member of

the United Federation of Teachers and is entitled to benefits from the United Federation of Teachers Welfare Fund. From May 8, 1973 through May 15, 1973 and again from May 18 through May 28, 1973, plaintiff Sussman's wife was hospitalized for hyperemesis, a condition related to her pregnancy. Plaintiff Sussman's wife was subsequently hospitalized from December 24, 1973 through December 26, 1973. She gave birth December 24, 1973.

10. Plaintiff Alicia Cantelmi is a female citizen of the United States, residing in the City and State of New York. She has been employed by the defendant Board of Education as a public school teacher since September 1966. She is insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and Group Health Incorporated. Plaintiff is a member of the United Federation of Teachers and is entitled to benefits under the United Federation of Teachers Welfare Fund. In connection with her first pregnancy plaintiff was required to commence maternity leave April 1, 1971. She was hospitalized from May 14, 1971 through May 18, 1971 and gave birth May 14, 1971. Plaintiff returned to work September 12, 1971.

In connection with her second pregnancy, plaintiff commenced leave December 23, 1972. She was hospitalized from December 29 through December 31, 1972 and gave birth December 29, 1972. She returned to work,on March 1, 1973.

11. Plaintiff Pamela Mills is a female citizen of the United States residing in the City and State of New York. She has been employed by the defendant New York City Health and Hospitals Corporation since April 3, 1972. In connection with her employment, she is insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and Health Insurance Plan of Greater New York. Plaintiff is a member of Local 371 of the Social Services Employees Union and is entitled to benefits from the Social Service Employees Union Welfare Fund. Plaintiff commenced maternity leave November 16, 1972. She was hospitalized December 6th through December 14th, 1972. She gave birth by Caesarean section December 7, 1972 and returned to work on or about January 15, 1973.

12. Plaintiff Susan Pass is a female citizen of the United States, residing in the City and State of New York. She is employed by the City's Human Resources Administration,

Manpower Area Planning Council, and in connection with her employment she is insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and Health Insurance Plan of Greater New York. Plaintiff is a member of Local 371 of the Social Services Employees Union and is entitled to benefits under the Social Services Employees Union Welfare Fund. Plaintiff Pass is pregnant and is expected to give birth April 17, 1974.

13. Plaintiff Linda Zises is a female citizen of the United States residing in the City and State of New York. She has been employed by the City's Human Resources Administration, Department of Social Services since July 6, 1965. In connection with her employment, she is insured under the City's health insurance plans with coverage, at times relevant to this complaint, under Blue Cross and Blue Shield Basic and Major Medical. Plaintiff is a member of Local 371 of the Social Services Employees Union and is entitled to benefits under the Social Services Employees Union Welfare Fund. In connection with her first pregnancy, plaintiff was required to commence maternity leave April 22, 1968. She was hospitalized from June 7, 1968 through June 9, 1968.

She gave birth June 7, 1968 and returned to work August 25, 1968. In connection with her second pregnancy, plaintiff commenced maternity leave January 3, 1972. She was hospitalized from January 3, 1972 through January 5, 1972. She gave birth January 3, 1972 and returned to work February 14, 1972.

14. Plaintiff Emily Blitz is a female citizen of the United States, residing in the City and State of New York. She has been employed by the City's Human Resources Administration, Department of Social Services since December, 1963. In connection with her employment she is insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and Blue Shield Basic and Major Medical. Plaintiff is a member of Local 371 Social Services Employees Union and is entitled to benefits from the Social Services Employees Union Welfare Fund. Plaintiff commenced maternity leave on March 15, 1973 and was hospitalized from March 15, 1973 through March 22, 1973. She gave birth by Caesarean section March 15, 1973, and returned to work on or about June 11, 1973.

15. Plaintiff Susan Padwee is a female citizen of the United States, residing in the City and State of New York. She has been employed by the City's Human Resources Administration Department of Social Services, since October 1966. In connection with her employment she was insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and Group Health Incorporated. At all times relevant to this complaint, plaintiff was a member of Local 371 Social Service Employee's Union and entitled to benefits from the Local 371 Social Services Employee's Union Welfare Fund. Plaintiff commenced maternity leave on February 5, 1973. She was hospitalized from March 8, 1973 through March 11, 1973. She gave birth March 8, 1973 and has not at the present time returned to work.

16. Plaintiff Elaine Justic is a female citizen of the United States residing in the City and State of New York. She has been employed by the City's Human Resources Administration, Department of Social Services, at all times relevant to this complaint. In connection with her employment, she was insured under the City's health insurance plans

with coverage at times relevant to this complaint under Blue Cross and Health Insurance Plan of Greater New York. At all times relevant to this complaint plaintiff was a member of District Council 37 and entitled to benefits under District Council 37's Health and Security Plan. Plaintiff commenced maternity leave March 9, 1973. She was hospitalized May 16, 1973 through May 19, 1973. She gave birth May 16, 1973 and has not returned to work.

17. Plaintiff Eula Carter is a female citizen of the United States residing in the City and State of New York. She has been employed by the City's Human Resources Administration Department of Social Services since 1966. In connection with her employment she is insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and Health Insurance Plan of Greater New York. Plaintiff is a member of District Council 37 and is entitled to benefits under District Council 37's Health & Security Plan. Plaintiff commenced maternity leave December 11, 1972. She was hospitalized from January 22 through January 25, 1973. She gave birth January 22, 1973 and returned to work on April 30, 1973.

18. Plaintiff Linda Shah is a female citizen of the United States residing in the City and State of New York. She has been employed by the City's Human Resources Administration, Department of Social Services since April 1967. In connection with her employment she is insured under the City's health insurance plans with coverage at times relevant to this complaint under Blue Cross and Group Health Incorporated. Plaintiff is a member of Local 371 Social Services Employees Union and is entitled to benefits under Local 371 Social Services Employees Union Welfare Fund. Plaintiff commenced maternity leave November 27, 1972. She was hospitalized from November 28th through November 30, 1972. She gave birth on November 28, 1972 and returned to work on September 24, 1973.

B. Defendants

19. Defendant New York City is a municipal corporation with its principal offices located at City Hall, New York, New York. New York City is an employer within the meaning of 42 USC § 2000e(b), in that it is engaged in an industry affecting commerce and employs more than 25 persons.

20. Defendant Abraham Beame, is Mayor of the City of New York and its chief executive officer. The Mayor's offices are located at City Hall, New York, New York.

21. John V. Lindsay was Mayor of the City of New York during the period of time from April 22, 1968 to December 31, 1973.

22. Harry I. Bronstein is Chairman of the City Civil Service Commission, City Personnel Director and is responsible for the Administration of the Health Insurance Section, Department of Personnel of the City of New York. His office is located at 220 Church Street, New York, New York.

23. New York City Health and Hospitals Corporation maintains its principal place of business at 125 Worth Street, New York, New York. Defendant New York City Health and Hospitals Corporation has adopted rules and regulations governing the terms and conditions of leave taken by employees within its jurisdiction.

24. New York City Housing Authority maintains its principal place of business at 250 Broadway, New York, New

York. Defendant New York City Housing Authority has adopted rules and regulations governing the terms and conditions of leave taken by employees within its jurisdiction.

25. New York City Off-Track Betting Corporation maintains its principal place of business at 1501 Broadway, New York, New York. Defendant has adopted rules and regulations governing the terms and conditions of leave taken by employees within its jurisdiction.

26. Defendants Joseph Monserrat, Seymour P. Lachman, Isaiah E. Robinson, Jr., and Mary E. Meade, constitute the defendant New York City Board of Education, which maintains its principal place of business at 110 Livingston Street, Brooklyn, New York. Defendants have adopted rules and regulations governing the terms and conditions of leave taken by employees within its jurisdiction.

27. Defendant Associated Hospital Service of New York is a not-for-profit hospital service corporation (referred to herein as "Blue Cross"). Blue Cross's principal place of business is located at 622 Third Avenue, New York, New York.

28. Defendant Group Health Incorporated (referred to herein as GHI) is a not-for-profit corporation with its principal place of business located at 227 West 40th Street, New York, New York.

29. Defendant United Medical Service, Inc. (referred to herein as "Blue Shield") is a not-for-profit medical expense indemnity corporation. Blue Shield's principal place of business is located at 2 Park Avenue, New York, New York.

30. Defendant Social Services Employees Union (referred to herein as "SSEU") is a labor organization within the meaning of 42 USC § 2000e(b) in that it represents 25 or more employees and is recognized as the representative of employees of an employer engaged in an industry affecting commerce. The SSEU maintains offices at 817 Broadway, New York, New York.

31. Defendant SSEU Welfare Fund is a non-employee-contributory union welfare fund with its principal offices located at 80 Fifth Avenue, New York, New York.

32. Defendant District Council 37 American Federation of State, County and Municipal Employees (referred to herein as "D.C.37") is a labor organization within the mean-

ing of 42 USC § 2000e(b) in that it represents twenty-five or more employees and is recognized as the representative of employees of an employer engaged in an industry affecting commerce. D.C.37's principal offices are located at 365 Broadway, New York, New York.

33. Defendant D.C.37 Health and Security Plan is a non-employee-contributory union welfare fund with its principal offices located at 365 Broadway, New York, New York.

34. Defendant United Federation of Teachers (referred to herein as "UFT") is a labor organization within the meaning of 42 USC § 2000e(b) in that it represents twenty-five or more employees and is recognized as the representative of employees of an employer engaged in an industry affecting commerce. UFT's principal offices are located at 260 Park Avenue South, New York, New York.

35. Defendant UFT Welfare Fund is a non-employee contributory union welfare fund with its principal offices located at 260 Park Avenue South, New York, New York.

IV. EXHAUSTION

36. Plaintiff Robertson filed a complaint of sex discrimination with the New York City Commission on Human Rights dated December 26, 1972, No. 5887-CE-S. On or about August 24, 1973, the New York City Commission on Human Rights made a determination that probable cause existed to believe that plaintiff Robertson had been discriminated against on the basis of her sex. On or about October 9, 1973, plaintiff Robertson also filed a complaint of sex discrimination with the Equal Employment Opportunity Commission (referred to herein as "EEOC") No. TNY 3-0776. The EEOC has not dismissed plaintiff's complaint, filed a civil action, or entered into a conciliation agreement.

37. On April 11, 1973, plaintiff Boyarsky filed a complaint of sex discrimination with the New York City Commission on Human Rights, No. 6033-CE-S. Plaintiff Boyarsky also filed a complaint with the EEOC dated May 9, 1973, No. TNY 3-1540. On August 16, 1973, the New York City Commission on Human Rights made a determination that probable cause existed to believe that plaintiff Boyarsky had been discriminated against on the basis of her sex. The EEOC has not dismissed

plaintiff's complaint, filed a civil action, or entered into a conciliation agreement.

38. Plaintiff Gross has filed no charges of sex discrimination with any federal, state, or city administrative agency.

39. On or about December 27, 1972, plaintiff Friedman filed a complaint of sex discrimination with the New York City Commission on Human Rights. Plaintiff Friedman also filed a complaint of sex discrimination with the EEOC on or about October 10, 1973, No. TNY 4-0469. The EEOC has not dismissed plaintiff's complaint, filed a civil action, or entered into a conciliation agreement.

40. Plaintiff Sussman filed a complaint of sex discrimination with the New York City Commission on Human Rights dated September 29, 1973, No. 6218-CE-S.

41. In January of 1971, plaintiff Cantelmi filed a complaint of sex discrimination in connection with her first pregnancy, with the New York City Commission on Human Rights. On October 21, 1972, in connection with her second pregnancy, plaintiff Cantelmi filed a second complaint with the New York City Commission on Human Rights, No. 5799-CE-S.

On or about May 11, 1973, plaintiff Cantelmi also filed complaints of sex discrimination with the EEOC Nos. TNY 3-1472 and TNY 3-1473. On August 24, 1973, the New York City Commission on Human Rights found probable cause to believe that plaintiff had been discriminated against on the basis of her sex. The EEOC has not dismissed plaintiff's complaint, filed a civil action, or entered into a conciliation agreement.

42. Plaintiff Mills filed a complaint of sex discrimination with the New York City Commission on Human Rights, October 18, 1972, No. 5794-CE-S. November 28, 1972, plaintiff Mills also filed a complaint of sex discrimination with the EEOC, No. TNY 3-0720. The New York City Commission found probable cause to believe that plaintiff had been discriminated against in August of 1973. The EEOC has not dismissed plaintiff's complaint, filed a civil action, or entered into a conciliation agreement.

43. Plaintiff Pass filed a charge of sex discrimination with the New York City Commission on Human Rights dated October 18, 1973, No. 6224-CE-S.

44. On or about January 26, 1971, plaintiff Zises filed a complaint of sex discrimination in connection with her first pregnancy with the New York City Commission on Human Rights, No. 4801-CE-S. By decision dated September 1, 1971, the Commission found no probable cause to believe that plaintiff had been subjected to discrimination on the basis of her sex. In October 1971, plaintiff filed a complaint of sex discrimination in connection with her second pregnancy with the New York City Commission on Human Rights. On June 28, 1972, plaintiff also filed a complaint with the EEOC. The EEOC has not dismissed plaintiff's complaint, filed a civil action, or entered into a conciliation agreement.

45. Plaintiff Blitz filed a complaint of sex discrimination with the New York City Commission on Human Rights January 24, 1973, No. 5915-J-S. By decision dated August 30, 1973, the Commission found probable cause to believe that plaintiff had been subjected to discrimination on the basis of her sex.

46. On January 12, 1973, plaintiff Padwee filed a complaint of sex discrimination with the New York City Commission on Human Rights, No. 5899-J-S. On August 15, 1973,

the New York City Commission on Human Rights determined that probable cause existed to believe that plaintiff Padwee had been discriminated against. Plaintiff Padwee also filed a complaint of sex discrimination with the EEOC, dated November 16, 1973, No. TNY 4-0651. The EEOC has not dismissed plaintiff's complaint, filed a civil action, or entered into a concilation agreement.

47. On or about March 19, 1973, plaintiff Justic filed a complaint with the New York City Commission on Human Rights, No. 6002-CE-S. On or about March 20, 1973, plaintiff Justic also filed two complaints with the EEOC alleging sex discrimination, Nos. TNY 3-1198, TNY 3-1199. By a decision dated August 14, 1973, the City Commission found probable cause to believe that plaintiff had been discriminated against on the basis of her sex. The EEOC has not dismissed plaintiff's complaint, filed a civil action, or entered into a conciliation agreement.

48. On or about May 15, 1973, plaintiff Carter filed a complaint of sex discrimination with the New York City Commission on Human Rights, No. 6063-CE-S. On or about June 12, 1973, plaintiff Carter also filed a complaint with

the EEOC No. TNY 3-1563. The EEOC has not dismissed plaintiff's complaint, filed a civil action, or entered into a conciliation agreement.

49. Plaintiff Shah filed a complaint of sex discrimination with the New York City Commission on Human Rights dated October 16, 1972, No. 5809-JE-S. On or about November 2, 1972, plaintiff Shah also filed a complaint of sex discrimination with the EEOC, No. TNY 3-0542. On or about August 24, 1973, the New York City Commission on Human Rights made a determination that probable cause existed to believe that plaintiff Shah had been discriminated against on the basis of her sex. The EEOC has not dismissed plaintiff's complaint, filed a civil action, or entered into a conciliation agreement.

V. CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION

50. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "49" of this complaint with the same force and effect as if set forth at length herein.

51. Defendants City, Beame, Lindsay and Bronstein have, in violation of the United States Constitution, Title VII of the 1964 Civil Rights Act, the Civil Rights Act of 1866, the Constitution and laws of the State of New York, the New York Administrative Code and New York City Mayoral Executive Orders, discriminated against the plaintiffs in this action in the terms and conditions of employment because of sex, in that the health and hospitalization insurance plans negotiated and approved by defendants Beame, Lindsay and Bronstein and provided by defendant City in connection with city employment offer substantially fewer benefits for pregnancy and pregnancy-related conditions than for other medical and surgical problems requiring hospital and medical care.

A. Blue Cross

52. Blue Cross coverage in effect since October 1, 1973, limits insurance payments for hospital charges in connection with a normal delivery or abortion to $80.00. Coverage for conditions arising out of and during pregnancy is limited to $10.00 per day for eight days. While greater benefits are provided for surgical maternity procedures and miscarriage,

the coverage is still less than that provided for non-maternity hospitalization. In contrast, Blue Cross pays in full for the first 21 days of a hospital stay for other medical or surgical procedures, and pays one-half of hospital charges for up to 180 days. Coverage of hospital charges in non-maternity cases includes charges for bed and board, general nursing, operating rooms and equipment, recovery rooms and equipment, laboratory, X-Ray, drugs and medicine, blood transfusion equipment, oxygen, anaesthesia supplies and equipment, dressings, cardiac equipment, basal metabolic examination, and physio-therapeutic equipment. If an insured's normal delivery occurs outside New York City, there is no coverage at all. While emergency care in non-member hospitals within the New York area is provided in the case of other procedures, such emergency care is not covered for maternity. As a result, plaintiffs Gross, Sussman and Pass, as well as other members of the class have been discriminated against in the terms and conditions of their employment because of sex.

53. Blue Cross coverage in effect from July 1, 1970 through September 30, 1973, was the same as coverage currently provided except that hospitalization in connection with abortion was covered to the same extent as Caesarean section, ectopic pregnancy and miscarriage. As the result of the discrimination in coverage under this older plan, plaintiffs Robertson, Boyarsky, Friedman, Sussman, Cantelmi, Mills, Zises, Blitz, Padwee, Justic, Carter and Shah, as well as other class members have been discriminated against in terms and conditions of their employment because of sex.

54. Employees have an option to secure additional insurance coverage under the Blue Cross option for expanded coverage. Under this option, in effect under both the July 1, 1970 and October 1, 1973 plans, covered hospitalization is increased from 21 to 120 days and additional days up to 180 are paid for at fifty percent. Private duty nursing is also provided for the first 72 hours. Nevertheless under this expanded coverage plan, coverage of hospitalization for pregnancy is limited to $80.00. As a result of this insurance

plan, plaintiff Robertson, as well as other class members have been subjected to discrimination in the terms and conditions of their employment on the basis of sex.

B. Blue Shield

55. Under the Blue Shield Major Medical Plan in effect from July 1, 1970 to September 30, 1973, the balance of charges for hospital services of the type covered by Blue Cross were paid by Blue Shield if not fully covered by Blue Cross. In addition, Blue Shield Major Medical also covered private nurses, local professional ambulance service, hospital expenses for admission for diagnositc studies, physical therapy and rehabilitation, as well as out-of-hospital doctors' services. However, this plan provided no coverage whatever for normal delivery, or infant care. As a result, plaintiffs Robertson, Sussman, Friedman and Zises, as well as other class members have been discriminated against in the terms and conditions of employment, because of sex.

56. The Basic Blue Shield plan in effect from July 1, 1970 to September 30, 1973 paid $150.00 for an obstetrical delivery and scheduled amounts for surgical maternity procedures. The plan excluded from coverage routine care of newborn

infants. The plan excluded from its coverage for in-hospital consultation service, any condition arising out of pregnancy. As a result of this insurance policy, plaintiffs Robertson, Sussman, Friedman, Zises and Blitz, as well as other class members, were discriminated against in the terms and conditions of their employment on the basis of sex.

C. Group Health Incorporated

57. The GHI Major Medical (GHI Type E) in effect since October 1, 1973, carries forward the same plan previously provided by Blue Shield Major Medical. As a result of this insurance policy, plaintiffs Gross and Sussman as well as other class members have been discriminated against on the basis of sex.

58. The GHI Basic (GHI Type E) Medical and Surgical Program in effect since October 1, 1973, carries forward the same plan previously provided by the Blue Shield Basic Plan. As a result of this insurance policy, plaintiffs Gross and Sussman as well as other class members have been discriminated against on the basis of sex.

59. GHI coverage under both the July 1, 1970 and October 1, 1973 plans generally pays scheduled surgical al-

lowances and also pays physicians allowances based on the number of in and out-of-hospital doctor visits. However, maternity benefits are limited to specific maximums. There is no coverage for ambulance service required in connection with pregnancy and pregnancy-related conditions while a cash allowance is provided for other medical and surgical conditions requiring an ambulance. No payments for professional nursing are covered for obstetrical delivery. As a result of the discriminatory insurance policy, plaintiffs Boyarsky, Cantelmi, Padwee and Shah as well as other class members, have been deprived of equal terms and conditions of employment because of sex.

AS AND FOR A SECOND CAUSE OF ACTION

60. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "59" of this complaint with the same force and effect as if set forth at length herein.

61. Defendants Blue Cross, Blue Shield, and GHI have aided and abetted the defendant City in its illegal discriminatory acts in that they have negotiated and entered into health and hospital insurance contracts which discriminate in their provisions on the basis of sex and have as a result damaged plaintiffs and the class as previously alleged.

AS AND FOR A THIRD CAUSE OF ACTION.

62. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "59" of this complaint with the same force and effect as if set forth at length herein.

63. Defendants SSEU, D.C.37 and UFT have discriminated against plaintiffs and the class because of sex, in that they have negotiated and approved health and hospitalization insurance fringe benefits which are discriminatory, thereby causing plaintiffs and the class they represent damages as previously alleged.

AS AND FOR A FOURTH CAUSE OF ACTION

64. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "49" of this complaint with the same force and effect as if set forth at length herein.

65. The defendants City, UFT and defendant UFT Welfare Fund have discriminated against plaintiffs Friedman, Cantelmi and other class members because of sex, in that the defendants have established and administered the defendant UFT Welfare Fund which offers no temporary disability benefits for disability resulting from pregnancy and pregnancy-related conditions, while temporary disability payments are provided for disability resulting from other medical and surgical conditions.

66. Defendants City, UFT and UFT Welfare Fund have discriminated against plaintiffs Friedman, Sussman, Cantelmi and other class members because of sex in that the defendants have established and administered the UFT Welfare Fund which provides supplemental health and hospitalization insurance coverage but, (a) supplemental coverage for employees electing City coverage under Blue Shield Basic and

Major Medical or GHI Basic & Major Medical (GHI Type E) Plans, excludes pregnancy and pregnancy-related conditions from its allowance for private duty nursing; (b) supplemental coverage for employees electing City coverage under GHI, excludes pregnancy and pregnancy-related conditions from its allowance for private duty nursing and (c) benefits supplemental to Blue Cross coverage excludes pregnancy and pregnancy-related conditions from its expanded hospitalization benefits.

AS AND FOR A FIFTH CAUSE OF ACTION

67. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "49" of this complaint with the same force and effect as if set forth at length herein.

68. The defendants City, D.C.37 and D.C.37 Health & Security Plan have discriminated against plaintiffs Robertson, Boyarsky, Gross, Justic and Carter, and other class members, because of their sex in that the defendants have established and administered the defendant D.C.37 Health and Security Plan which offers no temporary disability benefits for pregnancy and pregnancy-related conditions, while wage

replacement disability benefits are paid for temporary disabilities resulting from other conditions.

69. Defendants City, D.C. 37 and D.C.37 Health & Security Plan have discriminated against plaintiffs Robertson, Boyarsky, Justic and Carter, and other class members, because of sex in that the defendants have established and administered the defendant D.C.37 Health & Security Plan which includes a Family Major Medical Option supplementing coverage provided by the defendant City's health insurance plans. However, expenses for normal pregnancies are excluded from coverage under the option.

AS AND FOR A SIXTH CAUSE OF ACTION

70. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "49" of this complaint with the same force and effect as if set forth at length herein.

71. The defendants City, SSEU and SSEU Welfare Fund have discriminated against plaintiffs Zises, Mills, and Shah, and other class members on the basis of sex, in that the defendants have established and administered the

defendant SSEU Welfare Fund which, prior to February 1, 1973, paid no disability benefits for disabilities resulting from pregnancy and pregnancy-related conditions while it paid such benefits for disabilities resulting from other causes.

AS AND FOR A SEVENTH CAUSE OF ACTION

72. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "49" of this complaint with the same force and effect as if set forth at length herein.

73. The defendant City has adopted, maintained and enforced a leave policy which prior to September 1, 1972 discriminated against plaintiff Zises and other class members on the basis of sex. The City policy required an employee to report her pregnancy by the fourth month of pregnancy. Female city employees were not permitted to work after the completion of the fifth month of pregnancy without special permission. Pregnant employees were required to submit to a physical examination prior to resuming employment. Accrued sick leave could not be fully utilized by an employee required to take maternity leave. A pregnant employee on maternity leave, after exhaustion of the annual and sick leave permitted

to be utilized for maternity leave, lost her coverage under the City's health and hospitalization plans.

AS AND FOR AN EIGHTH CAUSE OF ACTION

74. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "49" of this complaint with the same force and effect as if set forth at length herein.

75. The defendant New York City Housing Authority has discriminated against class members on the basis of their sex in that it has adopted the maternity leave regulations promulgated by the defendant City and has applied and enforced them for employees of the New York City Housing Authority.

AS AND FOR A NINTH CAUSE OF ACTION

76. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "49" of this complaint with the same force and effect as if set forth at length herein.

77. The defendant Board of Education has adopted leave regulations which discriminate against plaintiffs

Robertson, Boyarsky, Friedman and Cantelmi and other class members, on the basis of their sex in that (a) prior to September 1, 1973, a woman who became pregnant was required to report her pregnancy, be examined by a Board physician, and take maternity leave at the end of her seventh month of pregnancy. The leave policy precluded the employee from utilizing any annual or sick leave for leave taken due to pregnancy. Thus an employee on maternity leave was considered to be on leave without pay. This status automatically caused a termination of union and employer-paid health and hospitalization insurance; and (b) at all times relevant to this complaint, the defendant Board of Education's leave policy treats leave taken in connection with pregnancy as an interruption in the continuity of employment in determining raises and promotions. Employees on regular annual or sick leave are treated as having continuous employment without the leave breaking the continuity of service.

AS AND FOR A TENTH CAUSE OF ACTION

78. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "49" of this complaint

with the same force and effect as if set forth at length herein.

79. Plaintiffs are informed and believe that defendant New York City Health & Hospitals Corporation has adopted, maintained and enforced leave policies which discriminate against class members on the basis of sex.

AS AND FOR AN ELEVENTH CAUSE OF ACTION

80. Plaintiffs repeat and reallege every allegation contained in Paragraphs "1" through "49" of this complaint with the same force and effect as if set forth at length herein.

81. Plaintiffs are informed and believe that defendant New York City Off-Track Betting Corporation has adopted, maintained and enforced leave policies which discriminate against class members on the basis of sex.

WHEREFORE, plaintiffs respectfully pray that with respect to all such causes of action, this Court:

1. Enjoin defendants, their agents, successors, employees, attorneys, and those acting in concert with them

and at their direction, from discriminating against plaintiffs and the class they represent and each member thereof with respect to the compensation, terms, conditions, or privileges of employment because of sex, and from continuing or maintaining any policy, practice, custom or usage of denying, abridging, withholding, conditioning, limiting or otherwise interfering with the rights of plaintiffs and the class they represent and each member thereof, to enjoy equal employment opportunities.

2. Declare and adjudge that the policies, practices, customs and usages complained of herein, violate the Constitution of the United States, the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Constitution and laws of the State of New York, the Administrative Code of the City of New York and the New York City Mayoral Executive Orders.

3. Enter judgment for compensatory damages in an amount to be fixed upon inquest and based upon:

(1) The difference between the benefits which each class member actually received under health and hospitalization insurance and union

welfare plans, which defendants provide for City employees, and those the class member would have received in the absence of illegal discrimination, from:

(a) the latter of the class member's date of employment by the City, or April 22, 1968; to

(b) the date on which judgment is entered in this action, or the date the class member ceases to be employed by the City, whichever is earlier; and

(2) The difference between the compensation, annual leave, sick leave, seniority or other terms or conditions of employment which each class member actually received, and the amount to which each class member would have been entitled in the absence of illegal discrimination, during the same period described above.

4. Enter judgment for punitive damages against defendant John Lindsay, in the amount of $10,000.

5. Allow plaintiffs the costs of maintaining this action including reasonable attorneys' fees, accounting fees, and auditing fees for the benefit of the class and for the representation of the class as a whole.

6. Grant such other and further relief as may appear to this Court to be just and equitable.

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Answer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMEN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated,	
Plaintiffs,	
- against -	
THE CITY OF NEW YORK: ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND.	ANSWER 74 CIV 304 (W.K.)
Defendants.	

Defendants, City of New York; Abraham Beame, Mayor of the City of New York; Harry Bronstein as Personnel Director; New York City Health and Hospitals Corporation;

New York City Off-Track Betting Corporation; Joseph Monserrat; Seymour P. Lachman; Isaiah E. Robertson, Jr.; Mary E. Meade, constituting the Board of Education of the City of New York, by their attorney, Adrian P. Burke, Corporation Counsel, for their answer to the complaint herein.

1. Deny each and every allegation contained in paragraph 1 of the complaint except admit that plaintiffs are seeking jurisdiction under 42 U.S.C. §2,000(e)-5(f)(3), 42 U.S.C. §1983 and 28 U.S.C. §1343(3) and under the doctrine of pendant jurisdiction.

2. Deny each and every allegation of paragraph 2 of the complaint except admit the plaintiffs are seeking to bring this action as a class action pursuant to Rule 23(b)(1) & (2) of the Federal Rules of Civil Procedure.

3. Deny each and every allegation contained in paragraph 3 of the complaint insofar as such allegations seek to establish the basis of an appropriate class action under Rule 23 of the Federal Rules of Civil Procedure. Defendants admit the allegations of paragraph 3B (1) and 3B (2). Defendants deny so much of paragraph 3B (3) that implies that the relief sought in Monell is any different than the injunctive, declaratory relief and damages sought in this case as relates to leave policy. Defendants deny

that the plaintiffs have been or are now subjected to discrimination with respect to the terms and conditions of employment on the basis of sex. Defendants deny that they have acted or have refused to act on grounds generally applicable to the class, thereby making final injunctive, and declaratory relief with respect to the class as a whole appropriate.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the complaint.

5. Defendants deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 5 of the complaint except admit that plaintiff, Robertson, is employed by the Board of Education and was required to commence maternity leave on December 11, 1972, gave birth on January 2, 1973 and returned to work on August 4, 1973.

6. Deny knowledge and information sufficient to form a belief as to the allegations of paragraph 6 of the complaint except admit that plaintiff Boyarsky is so employed and was required to commence leave on March 1, 1973, and gave birth on March 7, 1973.

7. Defendants deny knowledge and information sufficient to form a belief as to the allegations of paragraph 7 of the complaint except admits that plaintiff Gross is so employed.

8. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph 8 of the complaint except admit that plaintiff Friedman is so employed and was required to take leave on September 20, 1972 and gave birth on November 2, 1972.

9. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph 9 of the complaint except admit that plaintiff Sussman is so employed as a school guidance counselor.

10. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph 10 of the complaint except admit that plaintiff, Cantelli, is so employed and was required to commence leave on April 1, 1971 and gave birth on May 14, 1971 and returned to work on September 1, 1971. In connection with the second pregnancy defendants aver that plaintiff was not required to take pregnancy leave prior to the birth on December 29, 1973,

and has returned to work on March 1, 1973.

11. Deny knowledge or information sufficient to form a belief as to the allegations in paragraph 11 except admit that plaintiff, Mills, is so employed and that she commenced leave on November 16, 1972 and returned to work on or about January 15, 1973.

12. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph 12 except admit that plaintiff, Pass, is so employed.

13. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph 13 of the complaint except admit that plaintiff, Zises, is so employed and commenced leave on January 3, 1972 and returned to work on February 14, 1972. Defendants deny that the plaintiff was required to commence maternity leave on April 22, 1968, and aver that on information and belief the correct date was June 1, 1968.

14. Deny knowledge or information sufficient to form a belief as to the allegations of the complaint contained in paragraph 14 of the complaint except admit that plaintiff, Blitz, is so employed and that she commenced maternity leave on March 15, 1973, gave birth on March 15, 1973, and returned to work on June 11, 1973.

15. Deny knowledge or information sufficient to form a belief as to the allegation of paragraph 15 of the complaint except admits that plaintiff, Padwee, commenced leave on February 5, 1973, and gave birth on March 8, 1973 and has not returned to work.

16. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph 16 of the complaint except admit that plaintiff, Justic, is so employed. Defendants deny plaintiff commenced said maternity leave on March 9, 1973 but aver upon information and belief that the correct date is March 23, 1973.

17. Deny knowledge or information sufficient to form a belief as to allegations contained in paragraph 17 of the complaint except admit that plaintiff, Carter, is so employed and that she commenced leave December 11, 1972 and gave birth on January 2, 1973 and returned to work on April 30, 1973.

18. Deny knowledge or information sufficient to form a belief as to the allegations contained in paragraph 18 of the complaint except admit that plaintiff, Shah, is so employed and admit that plaintiff commenced maternity leave on November 28, 1972, and gave birth on November 28, 1972, and returned to work on September 24, 1973.

19. Admit the allegations of paragraph 19 of the complaint.

20. Admit the allegations of paragraph 20 of the complaint.

21. Admit the allegations of paragraph 21 of the complaint.

22. Admit the allegations of paragraph 22 of the complaint.

23. Admit the allegations of paragraph 23 of the complaint.

24. Admit on information and belief the allegations of paragraph 24 of the complaint.

25. Admit the allegations of paragraph 25 of the complaint.

26. Admit the allegations of paragraph 26 of the complaint.

27. Admit on information and belief the allegations contained in paragraph 27 of the complaint.

28. Admit on information and belief the allegations contained in paragraph 28 of the complaint.

29. Admit on information and belief the allegations contained in paragraph 29 of the complaint.

30. Admit on information and belief the allegations contained in paragraph 30 of the complaint.

31. Admit on information and belief the allegations contained in paragraph 31 of the complaint.

32. Admit on information and belief the allegations contained in paragraph 32 of the complaint.

33. Admit on information and belief the allegations contained in paragraph 33 of the complaint.

34. Admit on information and belief the allegations contained in paragraph 34 of the complaint.

35. Admit on information and belief the allegations contained in paragraph 35 of the complaint.

36. Admit on information and belief the allegations contained in paragraph 36 of the complaint.

37. Admit on information and belief the allegations contained in paragraph 37 of the complaint.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 38 of the complaint.

39. Admit on information and belief the allegations contained in paragraph 39 of the complaint.

40. Admit on information and belief the allegations contained in paragraph 40 of the complaint.

41. Admit on information and belief the allegations contained in paragraph 41 of the complaint.

42. Admit on information and belief the allegations contained in paragraph 42 of the complaint.

43. Admit on information and belief the allegations contained in paragraph 43 of the complaint.

44. Admit on information and belief the allegations contained in paragraph 44 of the complaint.

45. Admit on information and belief the allegations contained in paragraph 45 of the complaint.

46. Admit on information and belief the allegations contained in paragraph 46 of the complaint.

47. Admit on information and belief the allegations contained in paragraph 47 of the complaint.

48. Admit on information and belief the allegations contained in paragraph 48 of the complaint.

49. Admit on information and belief the allegations contained in paragraph 49 of the complaint.

FIRST CAUSE OF ACTION

50. Repeat and reallege the answer to paragraph 1 through 49 in the complaint in the same manner as originally answered herein.

51. Deny each and every allegation contained in paragraph 51 of the complaint and aver that the terms and conditions of the plans are as contained in the contracts entered into by the City and the respective health insurance carriers.

52. Defendants deny the allegations contained in paragraph 52 of the complaint except admit that there is a limit of $80 for normal delivery and that defendants make reference to the contract for the full terms and conditions of the benefits.

53. Deny each and every allegation of paragraph 53 of the complaint except aver that effective July 1, 1972 the contract between the City and Associated Hospital Service was changed to provide coverage for an elective abortion equivalent to coverage provided for a normal maternity delivery.

Answer

54. Deny each and every allegation contained in paragraph 54 of the complaint except admit that employees may secure additional full-benefit days of coverage but aver that the coverage for specific conditions including pregnancy remain the same.

55. Deny each and every allegation in paragraph 55 of the complaint except defendants admit that the major medical coverage did not supplement the fee for normal childbirth but did provide coverage for complications growing out of the pregnancy or childbirth and refer to the contract for its full term and provisions for such benefits.

56. Deny each and every allegation contained in paragraph 56 of the complaint and refer to the contract entered into between the health insurance carrier and the City.

57. Deny each and every allegation contained in paragraph 57 of the complaint except admit that the GHI Type E coverage now in effect carries forward the same plan previously provided by Blue Shield Major Medical.

58. Deny each and every allegation contained in paragraph 58 of the complaint except admit that the GHI basic coverage carries forward the same plan originally provided by the Blue Shield basic plan.

59. Deny each and every allegation contained in paragraph 59 of the complaint and refer to the contract entered into by the City and the carrier for its full terms thereof.

SECOND CAUSE OF ACTION

60. Repeat and reallege the answer in paragraphs 1 through 59 of the complaint in the same manner as originally answered herein.

61. Defendants deny each and every allegation contained in paragraph 61 of the complaint.

THIRD CAUSE OF ACTION

62. Repeat and reallege the answer to paragraphs 1 through 59 of the complaint in the same manner as originally answered herein.

63. Deny each and every allegation contained in paragraph 63 of the complaint.

FOURTH CAUSE OF ACTION

64. Repeat and reallege the answer to paragraphs 1 through 49 of the complaint in the same manner as originally answered herein.

65. Deny each and every allegation contained in paragraph 65 of the complaint except admit on information and belief that said welfare fund payments offer no disability payments for pregnancy.

66. Deny each and every allegation contained in paragraph 66 of the complaint and avers on information and belief that such supplemental coverage does not alter the terms of such contracts for specific conditions.

FIFTH CAUSE OF ACTION

67. Repeat and reallege the answer to paragraphs 1 through 49 in the complaint in the same manner s originally answered herein.

68. Deny each and every allegation of plaintiffs' complaint paragraph 68 except admit upon information and belief that the union plan offers no temporary disability benefit for pregnancy.

69. Deny each and every allegation contained in paragraph 69 of the complaint and aver, on information and belief, that such supplemental coverage does not alter the terms of the City's health insurance program for specific conditions.

SIXTH CAUSE OF ACTION

70. Repeat and reallege the answer to paragraphs 1 through 49 of the complaint in the same manner as originally answered herein.

71. Deny each and every allegation contained in paragraph 71 of the complaint except admit, on information and belief, that prior to February 1, 1973, there was no disability benefit for pregnancy.

SEVENTH CAUSE OF ACTION

72. Repeat and reallege the answer to paragraphs 1 through 49 of the complaint in the same manner as originally answered herein.

73. Deny the allegations contained in paragraph 73 of the complaint that allege the City adopted, maintained, and enforced a leave policy which, prior to September 1, 1972 discriminated against plaintiff Zises and other class members on the basis of sex, and deny that pregnant employees were required to submit to a physical examination prior to resuming employment; and aver that the regulations referred to in this paragraph of the complaint are not now in effect, have not been in effect since late 1971 with respect to Human Resources Administration and the Department of Social Services, and have not been in effect with respect to all other City agencies since January 19, 1972.

EIGHTH CAUSE OF ACTION

74. Repeat and reallege the answer to paragraphs through 49 of the complaint in the same manner as originally answered herein.

75. Deny that the maternity leave regulation

NINTH CAUSE OF ACTION

76. Repeat and reallege the answers to paragraphs 1 through 49 of the complaint in the same manner as originally answered herein.

77. Deny each and every allegation in paragraph 77 of the complaint except the allegations concerning the reporting of pregnancy and that employees on regular annual or sick leave are treated as having continuous employment without the leave breaking the continuity of service; and deny, as to the non-pedagogical employees, that the leave policy precluded the employee from utilizing any annual or sick leave for leave taken due to pregnancy, and as to those employees, that maternity leave was considered leave without pay, and that this status automatically caused termination of union- and employer-paid health and hospital insurance; and avers that plaintiff-employees, including the alleged class representatives, worked beyond the seventh month of pregnancy; and further aver that the policy of the Board of Education is now to grant the same benefits to pregnant employees as to sick employees.

TENTH CAUSE OF ACTION

78. Repeat and reallege the answer to paragraphs 1 through 49 of the complaint in the same manner as originally answered herein.

79. Deny each and every allegation contained in paragraph 79 of the complaint.

ELEVENTH CAUSE OF ACTION

80. Repeat and reallege the answers to paragraphs 1 through 49 of the complaint in the same manner as originally answered herein.

81. Deny each and every allegation contained in paragraph 81 of the complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

82. The complaint fails to state a claim upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

83. The plaintiffs lack standing to institute a class action in that plaintiffs have failed to meet the conditions for class actions under Rule 23 of the Rules of Federal Procedure, and further, the plaintiffs have failed to comply with Local Rule 11A of this Court concerning class actions. In addition, no plaintiff is an employee or a representative of an employee who is employed by the New York City Off-Track Betting Corporation, a public benefit corporation established pursuant to the laws of the State of New York.

FOR A THIRD AFFIRMATIVE DEFENSE

84. The relief sought is barred in whole or in part by the applicable statute of limitations.

FOR A FOURTH AFFIRMATIVE DEFENSE

85. This Court lacks jurisdiction over the subject matter of the complaint.

FOR A FIFTH AFFIRMATIVE DEFENSE

86. Plaintiffs and the class they are alleged to represent are guilty of such laches as should bar the plaintiffs from maintaining this action.

FOR A SIXTH AFFIRMATIVE DEFENSE

87. There is pending in this Court another class action entitled MONELL et al., against DEPARTMENT OF SOCIAL SERVICES OF THE CITY OF NEW YORK, et al., 71 Civ. 3324 as stated in paragraph 3B3 of plaintiffs' complaint, in which the leave regulations of the City and the Board of Education are at issue and the same relief is being sought in this action concerning the defendants' leave policies.

FOR A SEVENTH AFFIRMATIVE DEFENSE

88. There is no actual controversy between the plaintiff, Women in City Government United, and the defendants.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

89. The New York City Board of Estimate is an indispensable party to this action since such body is empowered to, and did, execute contracts with defendants, Associated Hospital Service, Inc., and United Medical Services, Inc., and Group Health Insurance, Incorporated, for the provision of health and hospital insurance coverage for municipal employees.

FOR A NINTH AFFIRMATIVE DEFENSE

90. This Court lacks jurisdiction over the subject matter of plaintiffs' claims arising under the Constitution and laws of the State of New York, and the New York City Mayoral Executive Order No. 71, April 2, 1968, as amended by Executive Order No. 23, August 24, 1970, as there are no valid federal law claims from which this Court may derive pendent jurisdiction over non-federal claims.

FOR A TENTH AFFIRMATIVE DEFENSE

91. The pendent claims should be dismissed by this Court in the exercise of its descretion, or action thereon stayed, since such claims have not been authoritatively adjudicated by the judiciary of the State of New York.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

92. The City Commission of Human Rights, pursuant to the laws of the State of New York, has exclusive jurisdiction of the pendent claims of the plaintiffs herein, whose claims are presently pending before said Commission.

FOR A TWELFTH AFFIRMATIVE DEFENSE

93. Plaintiffs have failed to comply with Section 394a-1.0 of the Administrative Code of the City of New York and no notice of claim was served as required by the provisions thereof, on the pendent claims.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE

94. The complaint fails to state a cause of action and fails to state facts sufficient to constitute a class action in the pendent claims..

WHEREFORE, defendants, The City of New York: Abraham Beame as Mayor of the City of New York, Harry Bronstein, as City Personnel Director, New York City Health and Hospitals Corporation, New York City Off-Track Betting Corporation; Joseph Monserrat, Seymour P. Lachman, Isaiah E. Robinson, Jr., May E. Meade, Constituting the

Board of Education of the City of New York, demand judgment dismissing the complaint herein together with the costs and disbursements of this action.

Dated, New York, New York
April 19, 1974

ADRIAN P. BURKE
CORPORATION COUNSEL
ATTORNEY FOR DEFENDANTS,
The City of New York:
Abraham Beame as Mayor of the City of New York, Harry Bronstein, as City Personnel Director, New York City Health and Hospitals Corporation, New York City Off-Track Betting Corporation; Joseph Monserrat, Seymour P. Lachman, Isaiah E. Robinson, Jr., Mary E. Meade, Constituting the Board of Eductaion of the City of New York.

by /s/
DAVID W. FISHER
ASSISTANT CORPORATION COUNSEL
OFFICE & P.O. ADDRESS
MUNICIPAL BUILDING
NEW YORK, NEW YORK 10007
212-566-4467

Answer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTICE, EULA CARTER, and LINDA SHAW, on behalf of themselves and others similarly situated,

ANSWER

74 CIV 304

Plaintiffs,

-against-

THE CITY OF NEW YORK, ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK, JOHN V. LINDSAY, HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, NEW YORK CITY HOUSING AUTHORITY, NEW YORK CITY OFF TRACK BETTING CORPORATION, JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK, ASSOCIATED HOSPITAL SERVICE, INC. GROUP HEALTH INCORPORATED, UNITED MEDICAL SERVICE, INC., SOCIAL SERVICE INC., SOCIAL SERVICES EMPLOYEES UNION, SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND, DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES, DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN, UNITED FEDERATION OF TEACHERS, AND UNITED FEDERATION OF TEACHERS WELFARE FUND,

Defendants.

Defendant, NEW YORK CITY HOUSING AUTHORITY by its attorney EDWARD W. NORTON (Edward L. Johnson) of counsel) for his answer to plaintiffs alleges as follows:

1. Denies each and every allegation contained paragraph 1 of the complaint except that plaintiffs are

seeking jurisdiction on the 42 U.S.C. #2000 e-5(f) (3), 42 U.S.C. #1983 and 28 U.P.S. #343 (3) and under the doctrine of pendant jurisdiction.

2. Denies each and every allegation of paragraph 2 of the complaint except that admits that plaintiffs are seeking to bring this as a class action pursuant to Rule 23 (b) 1 and (2) of the Federal Rules of Civil Procedure.

3. Denies information sufficient to form a belief as to each and every allegation of the paragraphs #4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 23, 31, 32, 33, 34, 35, 36, 40, 41, 42, 43, 44, 47, 48, 49, 52, 53, 55, 56, 57, 58, 61, 63, 65, 66, 68, 69, 71, 73, 77, 79, and 81.

4. The defendants in response to paragraph 50 restate each and every allegation stated above as they relate to paragraphs 1 through 49 of the complaint as though fully set forth hereas. Respondent New York City Housing Authority makes the same response relating to paragraphs 1 through 49 of the complaint as to each and every alleged cause of action set forth by the plaintiffs.

5. Admits on information and belief the allegations of the complaint contained in paragraphs numbered 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30.

6. Denies each and every allegation contained in paragraph 75 except admits that it had adopted maternity leave regulations.

AS AND FOR A FIRST AND AFFIRMATIVE DEFENSE TO THE COMPLAINT AND EACH AND EVERY CAUSE OF ACTION.

7. The plaintiffs lack standing to institute a class action in that plaintiff failed to meet the prerequisites for a class action under Rule 23 of the Federal Rules of Civil Procedure.

AS A SECOND AFFIRMATIVE DEFENSE TO THE COMPLAINT AND THE FIRST AND THIRD CAUSE OF ACTION

8. The complaint and the First and Third Cause of Causes of Action pleaded therein fail to state a claim upon which relief can be granted.

AS A THIRD AFFIRMATIVE DEFENSE TO THE COMPLAINT AND THE SECOND CAUSE OF ACTION

9. The complaint and the Second Cause of Action pleaded therein fails to state a claim upon which relief can be granted.

AS A FOURTH AFFIRMATIVE DEFENSE TO THE COMPLAINT AND THE FIRST, SECOND AND THIRD CAUSES OF ACTION

10. This Court lacks jurisdiction over the subject matter of plaintiffs' claims arising under the Constitution and laws of the State of New York, the Administrative Code of the City of New York, and New York City Mayoral Executive Orders, as these claims raise no federal questions, as there is no diversity of citizenship between plaintiffs and defendants, and as there are no valid federal law claims from which this

Court may derive pendent jurisdiction over non-federal claims.

AS A FIFTH AFFIRMATIVE DEFENSE
TO THE COMPLAINT

11. The relief sought is barred, in whole or in part, by the applicable statutes of limitation.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

12. Plaintiff, Women In City Government United, has no standing to pursue this law suit.

AS AND FOR A SEVENTH AND AFFIRMATIVE
DEFENSE

13. Upon information and belief the NYC Board of Estimate is an indispensable party to this action and has not been named herein as a defendant.

AS AND FOR AN EIGHTH AFFIRMATIVE
DEFENSE

14. Plaintiffs have failed to comply with Section 157 of the New York State Public Housing Law in that no notice of claim was served upon the defendant New York City Housing Authority as required by the provisions thereof, on the pendant claims.

AS AND FOR A NINTH AFFIRMATIVE
DEFENSE

15. No named plaintiff is an employee of the defendant New York City Housing Authority, and the defendant Authority is a public corporation under the N. Y. State Public Housing Law. No justiciable claim has been stated.

Answer

Wherefore, the answering defendant NEW YORK CITY HOUSING AUTHORITY demands judgment dismissing the complaint as to it, together with such other and further relief as to this Court may seem just and proper, and the costs and disbursements of this action.

Yours etc.,

EDWARD W. NORTON
Attorney for Respondent
New York City Housing Authority
250 Broadway
New York, N. Y. 10007

DATED: NEW YORK, N. Y.

April 29, 1974

Edward L. Johnson of counsel

Answer

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH on behalf of themselves and others similarly situated,	
Plaintiffs,	74 Civ. 304 (W.K.) ANSWER OF DEFENDANTS ASSOCIATED HOSPITAL SERVICE, INC. AND UNITED MEDICAL SERVICE, INC.
v.	
THE CITY OF NEW YORK; ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND,	
Defendants.	

Defendants, ASSOCIATED HOSPITAL SERVICE, INC. ("AHS") and UNITED MEDICAL SERVICE, INC. ("UMS"), by their attorneys Breed, Abbott & Morgan, answer plaintiffs' complaint herein as follows:

Answer

1. Deny each and every averment of paragraph 1 of the complaint, except admit that plaintiffs seek by such paragraph to invoke the jurisdiction of this Court under 42 U.S.C. § 2000e-5(f)(3), 42 U.S.C §1983, and 28 U.S.C §1343(3) and upon the principles of pendent jurisdiction.

2. Deny each and every averment of paragraph 2 of the complaint, except admit that plaintiffs seek to bring this action as a class action pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

3. Deny each and every averment of paragraph 3 of the complaint insofar as such averments seek to establish the basis of a valid class under the provisions of Rule 23 of the Federal Rules of Civil Procedure, except deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 3 B of the complaint insofar as such averments refer to and characterize certain actions to which neither AHS nor UMS are parties.

4. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 4 of the complaint.

5. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 5 of the complaint, except aver that plaintiff Barbara Robertson has been enrolled as an AHS subscriber under Group Contract for Hospital

Service No. 1205 between AHS and the City of New York, effective July 1, 1967 (the "AHS-City Contract") and a UMS subscriber under Group Contract for Medical Service between UMS and the City of New York No. 157,100-157,999 effective January 1, 1965, terminated October 1, 1973 (the "UMS-City Contract"), and was hospitalized from January 1, 1973 to January 6, 1973.

6. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 6 of the complaint, except aver that plaintiff Leslie E. Boyarsky has been enrolled as an AHS subscriber under the AHS-City Contract, and was hospitalized from March 7, 1973 to March 10, 1973.

7. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 7 of the complaint, except aver that plaintiff Jacquelin Gross was enrolled as an AHS subscriber under the AHS-City Contract and was hospitalized from December 6, 1973 to December 9, 1973.

8. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 8 of the complaint, except aver that plaintiff Arlene Friedman has been enrolled as an AHS subscriber under the AHS-City Contract and as a UMS subscriber under the UMS-City Contract, and was hospitalized from November 2, 1962 to November 6, 1972.

9. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 9 of the

complaint, except aver that plaintiff Robert Sussman has been enrolled as an AHS subscriber under the AHS-City Contract and as a UMS subscriber under the UMS-City Contract, and that his wife, Diane Sussman was hospitalized from May 8 to May 14, 1973, May 18 to May 28, 1973 and December 24 to December 27, 1973.

10. Deny knowledge or information sufficient to form a belief as to the truth of the averment of paragraph 10 of the complaint, except aver that plaintiff Alicia Cantelmi has been enrolled as an AHS subscriber under the AHS-City Contract and as UMS subscriber under the UMS-City Contract, and was hospitalized from May 14 to May 18, 1971, and from December 29, 1972 to December 31, 1972.

11. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 11 of the complaint, except aver that plaintiff Pamela Mills has been enrolled as an AHS subscriber under the AHS-City Contract.

12. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 12 of the complaint, except aver that plaintiff Susan Pass has been enrolled as an AHS subscriber under the AHS-City Contract.

13. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 13 of the complaint, except aver that plaintiff Linda Zises has been enrolled as an AHS subscriber under the AHS-City Contract and as a UMS subscriber under the UMS-City Contract.

14. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 14 of the complaint, except aver that plaintiff Emily Blitz has been enrolled as an AHS subscriber under the AHS-City Contract and as a UMS subscriber under the UMS-City Contract, and was hospitalized from March 15, 1973 through March 22, 1973.

15. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 15 of the complaint, except admit that plaintiff Susan Padwee was enrolled as an AHS subscriber under the AHS-City Contract, and was hospitalized from March 8, 1973 through March 11, 1973.

16. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 16 of the complaint, except admit that plaintiff Elaine Justic was enrolled as an AHS subscriber under the AHS-City Contract, and was hospitalized from May 16, 1973 through May 19, 1973.

17. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 17 of the complaint, except admit that plaintiff Eula Carter was enrolled as an AHS subscriber under the AHS-City Contract, and was hospitalized from January 22, 1973 through January 25, 1973.

18. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 18 of the complaint, except admit that plaintiff Linda Shah was enrolled as an AHS subscriber under the AHS-City Contract, and was hospitalized from November 28, 1972 through December 1, 1972.

19. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 19 of the compalint, except admit, on information and belief that defendant New York City is a municipal corporation with its principal offices located at City Hall, New York, New York.

20. Admit, on information and belief, the averments of paragraph 20 of the complaint.

21. Admit, on information and belief, the averments of paragraph 21 of the complaint.

22. Admit, on information and belief, the averments of paragraph 22 of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the averment of said paragraph 22 that Harry Bronstein is responsible for the administration of the Health Insurance Section, Department of Personnel of the City of New York.

23. Admit, on information and belief, the averment of paragraph 23 of the complaint that New York City Health and Hospitals Corporation maintains its principal place of business at 125 Worth Street, New York, New York, but deny knowledge or

information sufficient to form a belief as to the truth of the remaining averments of said paragraph 23.

24. Admit, on information and belief, the averment of paragraph 24 of the complaint that the New York City Housing Authority maintains its principal place of business at 250 Broadway, New York, New York, but deny knowledge or information sufficient to form a belief as to the truth of the remaining averments of said paragraph 24.

25. Admit, on information and belief, the averment of paragraph 25 of the complaint that the New York City Off-Track Betting Corporation maintains its principal place of business at 1501 Broadway, New York, New York, but deny knowledge or information sufficient to form a belief as to the truth of the remaining averments of said paragraph 25.

26. Admit, on information and belief, the averment of paragraph 26 of the complaint that defendants Joseph Monserrat, Seymour P. Lachman, Isaiah E. Robinson, Jr., and Mary E. Meade constitute the New York City Board of Education, which maintains its principal place of business at 110 Livingston Street, Brooklyn, New York, but deny knowledge or information sufficient to form a belief as to the truth of the remaining averments of said paragraph 26.

27. Admit the averments of paragraph 27 of the complaint, and aver that AHS operates pursuant to the provisions of Article IX-C of the Insurance Law of the State of New York.

28. Admit, on information and belief, the averments of paragraph 28 of the complaint.

29. Admit the averments of paragraph 29 of the complaint, and aver that UMS operates pursuant to the provisions of Article IX-C of the Insurance Law of the State of New York.

30. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 30 of the complaint.

31. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 31 of the complaint.

32. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 32 of the complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 33 of the complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 34 of the complaint.

35. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 35 of the complaint.

36. Admit, on information and belief, the averments of paragraph 36 of the complaint.

Answer

37. Admit, on information and belief, the averments of paragraph 37 of the complaint.

38. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 38 of the complaint.

39. Admit, on information and belief, the averments of paragraph 39 of the complaint.

40. Admit, on information and belief, the averments of paragraph 40 of the complaint.

41. Admit, on information and belief, the averments of paragraph 41 of the complaint.

42. Admit, on information and belief, the averments of paragraph 42 of the complaint.

43. Admit, on information and belief, the averments of paragraph 43 of the complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth of the averments of paragraph 44 of the complaint.

45. Admit, on information and belief, the averments of paragraph 45 of the complaint.

46. Admit, on information and belief, the averments of paragraph 46 of the complaint.

47. Admit, on information and belief, the averments of paragraph 47 of the complaint.

48. Admit, on information and belief, the averments of paragraph 48 of the complaint.

49. Admit, on information and belief, the averments of paragraph 49 of the complaint.

50. In response to paragraph 50, restate each and every averment in paragraphs 1 through 49 above as they relate to paragraphs 1 through 49 of the complaint as though fully set forth hereat.

51. Deny each and every averment of paragraph 51 of the complaint, and aver that hospital and medical coverage available to plaintiffs pursuant to the contracts entered into between the City of New York and defendants AHS and UMS is as is provided for in said contracts.

52. AHS denies each and every averment of paragraph 52 of the complaint, and avers that the hospitalization coverage provided under the aforesaid contract for a normal maternity delivery or for an elective abortion as opposed to complications arising out of pregnancy such as a cesarian section, termination of an ectopic pregnancy or a spontaneous termination of pregnancy, is less extensive than hospitalization coverage provided for certain other medical and surgical experiences, and is subject to a limit of $80 as is more fully set forth in the terms and provisions of said contract.

53. Deny each and every averment of paragraph 53 of the complaint except aver that effective July 1, 1970 the aforesaid contract between AHS and the City of New York was amended so as to provide coverage for an elective abortion equivalent to coverage provided for a normal maternity delivery.

54. Deny each and every averment of paragraph 54 of the complaint, except admit that under the above-described contract between AHS and New York City subscribers may individually increase their full service benefit coverage from 21 days to 120 days but may not otherwise individually alter or expand coverage provided by the group contract with New York City for specific conditions, including maternity. AHS avers that it offers to sell many riders for expanded coverage which may be purchased by a group of subscribers. One such rider provides expanded coverage for maternity up to and including full service benefit coverage coextensive with that purchased for any other hospital, medical or surgical experience. AHS further avers that one group of employees covered under the New York City contract, the C.U.N.Y. Faculty Welfare Fund, has purchased a rider providing full service benefit coverage for normal maternity deliveries.

55. Deny each and every averment of paragraph 55 of the complaint. UMS avers that the contract between UMS and the City of New York, pursuant to which plaintiffs were offered medical expense coverage, was terminated on October 1, 1973.

UMS further avers that Blue Shield Major Medical coverage supplements the Blue Cross hospitalization coverage and the Blue Shield basic medical expense coverage in accordance with the terms of the said contract and does not supplement the coverage for normal maternity experiences provided by Blue Cross and Blue Shield Basic Medical, but does cover severe medical complications arising out of pregnancy or childbirth.

56. Deny each and every averment of paragraph 56 of the complaint. UMS avers that medical expense coverage available to plaintiffs for maternity and conditions arising out of pregnancy was as provided in the contract between UMS and the City of New York, as well as in supplemental coverage riders offered by UMS and purchased by certain groups of employees covered under the said contract with the City of New York, all of which coverage was terminated as of October 1, 1973.

57. Make no answer to paragraph 57 of the complaint, as it asserts no claim against defendants AHS or UMS.

58. Make no answer to paragraph 58 of the complaint, as it asserts no claim against defendants AHS or UMS.

59. Make no answer to paragraph 59 of the complaint, as it asserts no claim against defendants AHS or UMS.

60. In response to paragraph 60 of the complaint, repeat and reaver their answers to paragraphs 1 through 59 above as they relate to paragraphs 1 through 59 of the complaint, as though fully set forth hereat.

61. Deny each and every averment of paragraph 61 of the complaint, as they relate to defendants AHS and UMS and deny information sufficient to form a belief as to the truth of the averment of said paragraph relating to defendant GHI.

62. In response to paragraph 62 of the complaint, repeat and reaver their answers to paragraphs 1 through 59 above as they relate to paragraphs 1 through 59 of the complaint, as though fully set forth hereat.

63. Deny each and every allegation of paragraph 63 of the complaint.

64. In response to paragraph 64 of the complaint, repeat and reaver their answers to paragraphs 1 through 49 above as they relate to paragraphs 1 through 49 of the complaint, as though fully set forth hereat.

65. Make no answer to paragraph 65 of the complaint as it asserts no claim against defendants AHS or UMS.

66. Deny each and every averment of paragraph 66 of the complaint.

67. In response to paragraph 67 of the complaint, repeat and reaver their answers to paragraphs 1 through 49 above as they relate to paragraphs 1 through 49 of the complaint, as though fully set forth hereat.

68. Make no answer to paragraph 68 of the complaint as it asserts no claim against defendants AHS or UMS.

69. Deny each and every averment of paragraph 69 of the complaint.

70. In response to paragraph 70 of the complaint, repeat and reaver their answers to paragraph 1 through 49 above as they relate to paragraphs 1 through 49 of the complaint, as though fully set forth hereat.

71. Make no answer to paragraph 71 of the complaint as it asserts no claim against AHS or UMS.

72. In response to paragraph 72 of the complaint, repeat and reaver their answers to paragraphs 1 through 49 above as they relate to paragraphs 1 through 49 of the complaint, as though fully set forth hereat.

73. Make no answer to paragraph 73 of the complaint as it asserts no claim against AHS or UMS.

74. In response to paragraph 74 of the complaint, repeat and reaver their answers to paragraphs 1 through 49 above as they relate to paragraphs 1 through 49 of the complaint, as though fully set forth hereat.

75. Make no answer to paragraph 75 of the complaint as it asserts no claim against AHS or UMS.

76. In response to paragraph 76 of the complaint, repeat and reaver their answers to paragraphs 1 through 49 above as they relate to paragraphs 1 through 49 of the complaint, as though fully set forth hereat.

77. Make no answer to paragraph 77 of the complaint as it asserts no claim against AHS or UMS.

78. In response to paragraph 78 of the complaint, repeat and reaver their answers to paragraphs 1 through 49 above as they relate to paragraphs 1 through 49 of the complaint, as though fully set forth hereat.

79. Make no answer to paragraph 79 of the complaint as it asserts no claim against AHS or UMS.

80. In response to paragraph 80 of the complaint, repeat and reaver their answers to paragraphs 1 through 49 above as they relate to paragraphs 1 through 49 of the complaint, as though fully set forth hereat.

81. Make no answer to paragraph 81 of the complaint as it asserts no claim against AMS or UMS.

AS A FIRST AFFIRMATIVE DEFENSE TO THE COMPLAINT AND EACH AND EVERY CAUSE OF ACTION

82. The plaintiffs lack standing to institute a class action in that plaintiffs fail to meet the prerequisites for a class action under Rule 23 of the Federal Rules of Civil Procedure.

AS A SECOND AFFIRMATIVE DEFENSE TO THE COMPLAINT AND THE FIRST AND THIRD CAUSE OF ACTION

83. The complaint and the First and Third Cause of

Causes of Action pleaded therein fail to state a claim upon which relief can be granted.

AS A THIRD AFFIRMATIVE DEFENSE TO THE COMPLAINT AND THE SECOND CAUSE OF ACTION

84. The Complaint and the Second Cause of Action pleaded therein fails to state a claim upon which relief can be granted.

AS A FOURTH AFFIRMATIVE DEFENSE TO THE COMPLAINT AND THE FIRST, SECOND AND THIRD CAUSES OF ACTION

85. This Court lacks jurisdiction over the subject matter of plaintiffs' claims arising under the Constitution and laws of the State of New York, the Administrative Code of the City of New York, and New York City Mayoral Executive Orders, as these claims raise no federal questions, as there is no diversity of citizenship between plaintiffs and defendants, and as there are no valid federal law claims from which this Court may derive pendent jurisdiction over non-federal claims.

AS A FIFTH AFFIRMATIVE DEFENSE TO THE COMPLAINT

86. The relief sought is barred, in whole or in part, by the applicable statutes of limitation.

WHEREFORE, defendants Associated Hospital Service, Inc. and United Medical Service, Inc. demand judgment against plaintiffs dismissing the complaint herein as to them, and for such other and further relief as to the Court will appear just and proper in the premises, together with costs and disbursements of this action.

Respectfully Submitted,

BREED, ABBOTT & MORGAN

By David J. Pettes
A Member of the Firm

Attorneys for Defendants
Associated Hospital Service, Inc.
and United Medical Service, Inc.
Office and P.O. Address
1 Chase Manhattan Plaza
New York, New York 10005
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TO: Victor Rabinowitz, Esq.
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH on behalf of themselves and others similarly situated,	
Plaintiffs,	74 Civ. 304 Judge Knapp
v.	
THE CITY OF NEW YORK; ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND,	ANSWER OF GROUP HEALTH INCORPORATED
Defendants.	

Answer

Defendant GROUP HEALTH INCORPORATED (hereinafter referred to as "GHI") by its attorneys, Trubin Sillcocks Edelman & Knapp, for its answer alleges as follows:

1. Denies that it has knowledge or information sufficient to form a belief as to the truth of each and every allegation in the complaint except as specifically alleged below.

2. Denies each and every allegation set forth in paragraphs "1" and "2" and all allegations in paragraph "3B" and "3E" insofar as they relate to the complaint herein.

3. Denies that it has knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "19" of the complaint herein, except admits that defendant The City of New York is a municipal corporation with its principal offices located at City Hall, New York, New York.

4. Admits the allegations contained in paragraphs "20", "21" and "22" of the complaint herein.

5. Denies each and every allegation contained in paragraph "28" of the complaint herein, except admits that GHI is a New York not-for-profit health service corporation organized pursuant to Article IX-C of the New York State Insurance Law

with its principal place of business located at 227 West 40th Street, New York, New York.

6. With respect to paragraph "50" of the complaint, GHI repeats and realleges each and every admission, denial and denial of knowledge or information contained in paragraphs "1" through "5" inclusive of the answer with the same force and effect as if hereinafter set forth at length.

7. Denies each and every allegation contained in paragraphs "57", "58" and "59" of the complaint, except admits that the GHI Type E Contract took effect on October 1, 1973, and respectfully refers the Court to the GHI Type E Contract for a full and complete statement of the terms and provisions thereof.

8. With respect to paragraph "60" of the complaint, GHI repeats and realleges each and every admission, denial and denial of knowledge or information contained in paragraphs "1" through "7" inclusive, of this answer with the same force and effect as if hereinafter set forth at length.

9. Denies each and every allegation contained in paragraph "61" of the complaint insofar as such allegations relate to GHI.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

10. The complaint fails to state a claim against GHI upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

11. This Court does not have jurisdiction over the subject matter of the action.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

12. The complaint fails to state a claim upon which relief can be granted in a class action.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

13. Plaintiffs failed to adequately exhaust their administrative remedies before commencing the action.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

14. GHI is a New York not-for-profit health service corporation which is organized pursuant to, and governed by, the provisions of Article IX-C of the New York State Insurance Law.

15. GHI has complied with the New York State Insurance Law and the rules and regulations of the Insurance Department in connection with the terms of the GHI Type E Contract and the

rate charged to The City of New York by GHI thereunder, including provisions for limited obstetrical benefits.

16. GHI has in the past offered and continues to offer greater obstetrical benefits than those currently provided in the GHI Type E Contract at a rate of premium that is higher than the rate paid by The City of New York.

17. GHI is ready, willing and able to provide greater obstetrical benefits to The City of New York and the other defendants herein than those currently provided in the GHI Type E Contract if The City of New York accepts same at an increased rate commensurate with the cost of said benefits.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

18. The GHI major medical and basic medical and surgical program did not take effect until October 1, 1973.

19. In the event that damages are awarded to plaintiffs, GHI would not be liable for damage occurring prior to October 1, 1973.

Answer

WHEREFORE, defendant GHI demands judgment dismissing the complaint against it, and granting costs and disbursements of this action to GHI together with such other and further relief as to this Court may seem just and proper.

TRUBIN SILLCOCKS EDELMAN & KNAPP
Attorneys for Defendant
GROUP HEALTH INCORPORATED

By: _____
A Member of the Firm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated,

Plaintiffs,

-against-

THE CITY OF NEW YORK: ABRAHAM BEAM as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND,

Defendants.

----------x

ANSWER

74 CIV 304
(W.K.)

Answer

Defendants, United Federation of Teachers and United Federation of Teachers Welfare Fund by Delson & Gordon, their attorneys answering the plaintiffs' complaint allege:

1. Deny each and every allegation contained in paragraph 1 of the complaint except admit that plaintiffs are seeking jurisdiction under 42 U.S.C. § 2000(e)-5(f)(3), 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3) and under the doctrine of pendant jurisdiction.

2. Deny each and every allegation of paragraph 2 of the complaint except admit the plaintiffs are seeking to bring this action as a class action pursuant to Rule 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

3. Deny each and every allegation of paragraphs 3, 3A, 3B, 3B(1), 3B(2), 3B(3), 3C, 3D and 3E of the complaint, and aver that an appropriate class action has not been set forth, except admit that there are pending actions as enumerated in paragraphs 3B(1), 3B(2) and 3B(3) of the complaint.

4. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation

of paragraphs 4, 5, 6, 7, 11, 12, 13, 14, 15, 16, 17, 18, 23, 24, 25, 30, 31, 32, 33, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 68, 69, 71, 73, 75, 79, and 81 of the complaint.

5. Deny each and every allegation of paragraphs 51, 63, 65, and 66 of the complaint as the same relates to the answering defendants and deny knowledge or information sufficient to form a belief as to the truth of each and every allegation of said paragraphs as the same relates to the other defendants.

6. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation of paragraph 8 of the complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation of paragraph 9 of the complaint, except admit that plaintiff Robert Sussman is a member of the United Federation of Teachers.

8. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation of paragraph 10 of the complaint, except admit that plaintiff Alicia Cantelmi is a member of the United Federation of Teachers.

9. Deny the allegation of paragraph 34 of the complaint that the United Federation of Teachers "is a labor organization within the meaning of 42 U.S.C. § 2000e (b)".

10. Deny the allegation of paragraph 35 of the complaint that the United Federation of Teachers Welfare Fund is a "non-employee contributory union welfare fund".

11. Deny knowledge or information sufficient to form a belief as to the truth of each and every allegation of paragraph 41 of the complaint, except admit that plaintiff Alicia Cantelmi filed complaints of sex discrimination with the New York City Commission on Human Rights in October, 1972 and with the Equal Employment Opportunity Commission on May 11, 1973, and that the New York City Commission on Human Rights found probable cause to believe that plaintiff had been discriminated on the basis of sex on August 24, 1973.

12. Deny each and every one of the allegations of paragraphs 52, 53, 54, 55, 56, 57, 58, 59, 61 and 77 of the complaint as the same relates to the answering defendants and deny knowledge or information sufficient to form a

belief as to the truth of each and every allegation of said paragraphs as the same relates to the other defendants and aver that the terms and conditions for benefits are set forth in the contracts referred to therein.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. The court lacks jurisdiction over the subject matter of the lawsuit.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

15. The claims made and relief sought are barred in whole or in part by the applicable statutes of limitations.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

16. The claims made and relief sought are barred in whole or in part by waiver, estoppel or laches.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

17. Upon information and belief, there are prior actions pending before this Court seeking the same relief.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

18. Plaintiff, Women In City Government United, has no standing to prosecute this lawsuit.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

19. Upon information and belief, the New York City Board of Estimate is an indispensible party to this action, which has not been named herein as a defendant.

WHEREFORE, the answering defendants demand judgment dismissing the complaint, together with such other and further relief as to this Court may seem just and proper, and the costs and disbursements of this action.

Yours, etc.

DELSON & GORDON
Attorneys for Defendants,
United Federation of Teachers
and United Federation of
Teachers Welfare Fund

By: _____
A Member of the Firm

230 Park Avenue
New York, New York 10017
(212) 686-8030

Notice of Motion

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated,	74 Civ. 304 Judge Knapp
Plaintiffs,	NOTICE OF MOTION
-against-	
THE CITY OF NEW YORK; ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR: NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARRY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND,	
Defendants.	

Notice of Motion

TO: RABINOWITZ, BOUDIN & STANDARD
Attorneys for Plaintiffs
30 East 42nd Street
New York, New York

THE CORPORATION COUNSEL OF THE CITY OF NEW YORK
Attorney for Defendants,
THE CITY OF NEW YORK, ABRAHAM BEAME, JOHN V. LINDSAY, HARRY BRONSTEIN, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, NEW YORK CITY OFF-TRACK BETTING CORPORATION, JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE
Municipal Building
New York, New York 10007

EDWARD L. JOHNSON,
Attorney for Defendant,
NEW YORK CITY HOUSING AUTHORITY
250 Broadway
New York, New York

BREED, ABBOTT & MORGAN
Attorneys for Defendants,
ASSOCIATED HOSPITAL SERVICE, INC.,
UNITED MEDICAL SERVICE, INC.
1 Chase Manhattan Plaza
New York, New York 10005

TRUBIN, SILLCOCKS, EDELMAN & KNAPP
Attorneys for Defendant
GROUP HEALTH INCORPORATED
375 Park Avenue
New York, New York 10022

JULIUS TOPOL,
Attorney for Defendants
DISTRICT COUNCIL 37,
DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN
140 Park Place
New York, New York 10007

DELSON AND GORDON
Attorneys for Defendants
UNITED FEDERATION OF TEACHERS,
UNITED FEDERATION OF TEACHERS WELFARE FUND
230 Park Avenue
New York, New York

Notice of Motion

PLEASE TAKE NOTICE, that the undersigned will bring the annexed motion on for hearing before this Court at Room 706, United States Court House, Foley Square, City of New York, on the 17th day of May 1974, at 2:00 o'clock in the afternoon of that day or as soon thereafter as counsel can be heard.

Gerald J. Barre

MIRKIN, BARRE, SALTZSTEIN & GORDON, P.C.
Attorneys for Defendants,
SOCIAL SERVICE EMPLOYEES UNION LOCAL 371
SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND
98 Cutter Mill Road
Great Neck, New York 11021
(516) 466-6030

Motion to Dismiss

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated,	74 Civ. 304 Judge Knapp
Plaintiffs,	
-against-	MOTION TO DISMISS COMPLAINT PURSUANT TO RULES 12 AND 23, F.R. Civ. P., AND CIVIL RULE 11A
THE CITY OF NEW YORK; ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC; GROUP HEALTH INCORPORATED: UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS: and UNITED FEDERATION OF TEACHERS WELFARE FUND,	
Defendants.	

Defendants SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 and SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND move the Court as follows:

Motion to Dismiss

1. To dismiss this action with respect to said defendants on the ground that the Court lacks jurisdiction over the subject matter because the complaint shows on its face that plaintiffs asserting causes of action against the defendant pursuant to the provisions of the Civil Rights Act of 1964, Title 42, Section 2000E, et seq., United States Code, have not exhausted their remedies granted by said Civil Rights Act of 1964, in that:

A. Plaintiffs MILLS, PASS, ZISES, BLITZ, PADWEE, SHAH and WOMEN IN CITY GOVERNMENT UNITED, did not allege the receipt of notice from the Equal Employment Opportunity Commission of their "right to sue";

B. Plaintiffs PASS, BLITZ and WOMEN IN CITY GOVERNMENT UNITED, did not allege that they had filed a charge with the Equal Employment Opportunity Commission;

C. Plaintiffs MILLS, ZISES, PADWEE and SHAH did not allege that they had filed a charge with the Equal Employment Opportunity Commission, specifically naming the defendants, to wit: SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND and SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, as respondents therein.

2. To dismiss this action with respect to Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND on the ground that the Court lacks jurisdiction over the subject matter in that

the said WELFARE FUND is not an employer, labor organization or employment agency within the meaning of said Civil Rights Act of 1964, and is therefore not subject to said Act.

3. To dismiss this action with respect to said Defendants because the Complaint, on its face, fails to state a claim against Defendants upon which relief can be granted in that:

A. The facts as pleaded in the Plaintiffs' Third Cause of Action and Sixth Cause of Action do not state a claim under:

(i) The Civil Rights Act of 1866, Title 42, Section 1981, United States Code, or

(ii) The Fifth Amendment to the United States Constitution, or

(iii) The Fourteenth Amendment to the United States Constitution, upon which relief can be granted.

B. Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 did not negotiate and approve health and hospitalization insurance fringe benefits as pleaded in the Third Cause of Action, and therefore could not and did not commit an unlawful employment practice within the meaning of the said Civil Rights Act of 1964;

C. Plaintiffs SHAH and PADWEE have suffered no discrimination as pleaded in the Sixth Cause of Action as they were

paid by Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND for their disabilities resulting from pregnancy and pregnancy-related conditions as is more particularly set forth in the Affidavit of Frederick Charap, Fund Administrator, which is annexed hereto and marked Exhibit "A";

D. Plaintiffs ZISES, MILLS, PASS, BLITZ and WOMEN IN CITY GOVERNMENT UNITED failed to plead that a demand for disability benefits had been made upon Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND.

4. To dismiss the action as against said Defendants because the Complaint fails to state a claim upon which relief can be granted in a class action, in that:

A. The Plaintiffs have failed to make a timely motion, under Civil Rule 11A(c) of this Court, for a determination under 23(c)(1) F.R.Civ. P. as to whether this action is to be maintained as a class action;

B. Those persons constituting the alleged class of Plaintiffs having a cause of action against Defendants SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 and SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND are not so numerous as to make it impractical to bring them all before the Court. If a cause of action existed against said Defendants it existed only for the nine (9) month period from March 24, 1972, when the Civil Rights Act of 1964 was amended to include Defendant SOCIAL SERVICE EM-

PLOYEES UNION LOCAL 371, to January 1, 1973, when Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND amended its plan of benefits to remove the exclusion of pregnancy and pregnancy-related illnesses from its disability benefit and it is therefore practical to bring before the Court this alleged class of Plaintiffs;

C. The persons on whose behalf the action purports to be brought do not constitute a class but, on the contrary, their interests are distinct and adverse, in that:

(i) Female employees of the City of New York who were capable of becoming pregnant and who did not become pregnant cannot show that they are or were able to become pregnant; that they are or were entitled to any disability benefits from Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND; that they suffered any damage, discrimination or injury, therefore, their interests are distinct and adverse to female employees of the City of New York who did become pregnant; or

(ii) Male employees of the City of New York who had or have a wife or female dependent who became pregnant cannot show that they are or were entitled to any disability benefits from Defendant

SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND; that they suffered any damage, discrimination or injury since the said Defendant FUND does not provide any disability benefits to any dependents as is more particularly set forth in the Affidavit of Frederick Charap, Fund Administrator, annexed hereto and marked Exhibit "A" therefore, their interests are distinct and adverse to female employees of the City of New York who did become pregnant; or

(iii) Male employees of the City of New York who had or have a wife or female dependent who were capable of becoming pregnant cannot show that they are or were able to become pregnant; that they are or were entitled to any disability benefits from Defendant, SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND; that they suffered any damage, discrimination or injury, since the said Defendant FUND does not provide any disability benefits to any dependents as is more particularly set forth in the Affidavit of Frederick Charap, Fund Administrator, annexed hereto and marked Exhibit "A" therefore, their interests are distinct and adverse to female employees of the City of New York who did become pregnant;

D. The claims of the representative Plaintiffs asserting causes of action against Defendants SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 and SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND are not typical of the claims of the class, in that:

(i) Plaintiff SHAH received payment from the Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND of the full amount of the disability benefit both for disability due to or related to pregnancy and for other unrelated disabilities as is more particularly set forth in the Affidavit of Frederick Charap, Fund Administrator, annexed hereto and marked Exhibit "A". As a result of said payment Plaintiff SHAH's claim is not typical of the claims of the class, nor has Plaintiff SHAH suffered any injury, damage or discrimination, nor is Plaintiff SHAH a member of the alleged class; or

(ii) Plaintiff PADWEE received payment from the Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND of tne full amount of the disability benefit for the period during which said Plaintiff was disabled due to pregnancy as is more particularly set forth in the Affidavit of Frederick Charap, Fund Administrator,

annexed hereto and marked Exhibit "A". As a result of said payment, Plaintiff PADWEE's claim is not typical of the claims of the class, nor has Plaintiff PADWEE suffered any injury, damage or discrimination, nor is Plaintiff PADWEE a member of the alleged class; or

(iii) Plaintiff PASS is alleged to be currently pregnant and was and is, therefore, eligible for disability benefits, if disabled, from Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND. It is not alleged that Plaintiff PASS has applied for said disability benefits. Therefore, Plaintiff PASS's claim is not typical of the claims of the class, nor has Plaintiff PASS suffered any injury, damage or discrimination, nor is Plaintiff PASS a member of the alleged class; or

(iv) Plaintiff BLITZ is alleged to have been on maternity leave from March 15, 1973 to June 11, 1973 and was and is, therefore, eligible for disability benefits, if she was disabled, from Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND. Plaintiff BLITZ never applied for disability benefits even though the

appropriate forms were sent to Plaintiff BLITZ by Defendant SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND at the request of Plaintiff BLITZ. Therefore, Plaintiff BLITZ's claim is not typical of the claims of the class, nor has Plaintiff BLITZ suffered any injury, damage or discrimination, nor is Plaintiff BLITZ a member of the alleged class;

E. The representative Plaintiffs' asserting causes of action against Defendants SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 and SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND will not and can not fairly and adequately protect the interests of the alleged class, in that:

(i) Plaintiffs ZISES, MILLS, SHAH, PADWEE, PASS, BLITZ and WOMEN IN CITY GOVERNMENT UNITED, by failing to exhaust their remedies granted by said Civil Rights Act of 1964, have shown that they will not take all necessary steps to properly commence and prosecute this action; or

(ii) Plaintiffs ZISES, MILLS, SHAH, PADWEE, PASS, BLITZ and WOMEN IN CITY GOVERNMENT UNITED, by failing to make a timely motion under Civil Rule 11A(c) of this Court, for a determination under 23(c)(1) F.R. Civ. P. as to whether this

action is to be maintained as a class, have shown that they will not take all necessary steps to properly prosecute this action;

F. Plaintiff WOMEN IN CITY GOVERNMENT UNITED is not a representative party with claims that are typical of the claims of the alleged class, in that said Plaintiff is not a member of the alleged class, because:

(i) Said Plaintiff has not alleged that it represents anyone who would be included within the alleged class; or

(ii) Said Plaintiff has not alleged that it or any member of said Plaintiff has suffered any injury, damage or discrimination as a result of any action or lack of action by Defendants SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 and SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND;

(iii) Said Plaintiff cannot be a member of a class since it has no standing to bring any action under 42 U.S.C. 2000e-5(f)(1) in its own right;

G. Plaintiff WOMEN IN CITY GOVERNMENT UNITED, an alleged unincorporated association, has failed to name certain members as representative parties as is required by 23.2 F.R. Civ. P.

Motion to Dismiss

WHEREFORE, Defendants SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 and SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND, request this Court to:

1. Dismiss this action with respect to said Defendants on the ground that the Court lacks jurisdiction over the subject matter; or

2. Dismiss this action with respect to said Defendants because the Complaint fails to state a claim against Defendants upon which relief can be granted; or

3. Dismiss this action with respect to said Defendants because the Complaint fails to state a claim upon which relief can be granted in a class action; and for such other, further and different relief as to the Court may seem just and proper.

Dated: Great Neck, New York
April 16, 1974.

Gerald J. Barre

MIRKIN, BARRE, SALTZSTEIN & GORDON, P.C.

Attorneys for Defendants
SOCIAL SERVICE EMPLOYEES UNION LOCAL 371
SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND

Office and Post Office Address
98 Cutter Mill Road
Great Neck, New York 11021
Telephone No. (516) 466-6030

AFFIDAVIT OF FREDERICK CHARAP

IN SUPPORT OF DEFENDANTS MOTION

TO DISMISS COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER and LINDA SHAH, on behalf of themselves and others similarly situated, Plaintiffs, -against- THE CITY OF NEW YORK; ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND, Defendants.	74 Civ. 304 Judge Knapp AFFIDAVIT OF FREDERICK CHARAP IN SUPPORT OF MOTION OF SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 AND SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND, TO DISMISS THE COMPLAINT.

EXHIBIT "A"

Affidavit of Frederick Charap

STATE OF NEW YORK)
COUNTY OF NASSAU) ss.:

FREDERICK CHARAP, being first duly sworn, deposes and says:

1. I am the Administrator of the SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND, one of the above-named defendants, and I have been the Administrator since MARCH 4, 1974.

EXHIBIT "A"

I have personal knowledge of the matters hereinafter referred to, and make this Affidavit in support of Defendants' SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 and SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND, motion to dismiss the Complaint.

2. I have caused an examination to be made of the records of the SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND, which reveals that LINDA SHAH, during the two (2) year period from March 10, 1972 to March 9, 1974, was paid the full disability benefit on each of thirty-nine (39) weeks, by the SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND. The disability benefit was a maximum of Sixty-five ($65.00) Dollars per week until July 1, 1972, when the maximum was increased to Seventy-five

($75.00) Dollars per week. LINDA SHAH received payment from the said FUND, during said two year period, in the amount of Two Thousand Six Hundred and Seventy-three ($2,673.00) Dollars. During said two (2) year period LINDA SHAH received disability benefits for thirty-one (31) weeks plus one (1) day due to disability caused by infectious hepatitis, and eight (8) weeks minus one (1) day for disability caused by pregnancy.

3. The maximum period for which the said FUND pays disability benefits, due to any disability, is thirty-nine (39) weeks within any two (2) year period.

4. I have caused an examination to be made of the records of the SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND, which reveals that SUSAN PADWEE, on or about May 11, 1973, was paid the sum of Four Hundred and Eighty ($480.00) Dollars by the said FUND. This payment was for six (6) weeks plus two (2) days of disability due to pregnancy. The procedures of the said FUND, as published in the Plan of Benefits of the said FUND, provide that any claimant for disability benefits, may be required to undergo an examination by a physician chosen by the said FUND, at no expense to the claimant. On or about May 11, 1973 a letter was sent to SUSAN PADWEE, by the Fund Administrator, along with the payment of Four Hundred and Eighty ($480.00) Dollars, above-mentioned, informing SUSAN PADWEE that no additional disability benefits could be paid to her unless she agreed to be examined

by a physician chosen by the FUND. The records of the said FUND do not indicate that SUSAN PADWEE agreed to be examined by such a physician, nor do the records indicate that SUSAN PADWEE was examined by such a physician, nor do they indicate that SUSAN PADWEE submitted any additional evidence of disability to the said FUND on or after May 11, 1973.

5. The Plan of Benefits of the SOCIAL SERVICE EMPLOYEES UNION LOCAL 371, as published, provides for disability benefits only to covered members. Covered member is defined as a full-time per annum employee on active pay status in a title for which contributions are payable by the City of New York to the said FUND. The said Plan of Benefits does not provide for disability benefits for spouses or dependents of covered members.

6. I have caused an examination to be made of the records of the SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND, which reveals that PAMELA MILLS, SUSAN PASS, LINDA ZISES and EMILY BLITZ never applied for disability benefits from the said Fund.

7. I am informed by Selma Last, an employee of the SOCIAL SERVICE EMPLOYEES UNION LOCAL 371 WELFARE FUND that EMILY BLITZ

telephoned the office of the said FUND and requested that disability claim forms be sent to her. I am further informed by the said Selma Last that such forms were mailed to EMILY BLITZ. The records of the Fund do not indicate that EMILY BLITZ ever filed any claim forms for a disability benefit.

Frederick Charap
Frederick Charap

Sworn to before me, this
15TH day of April, 1974.

Notary Public

JEFFREY S. DUBIN
NOTARY PUBLIC, State of New York
No. 6108000
Qualified in Suffolk County
Commission Expires March 30, 1976.

AFFIDAVIT OF K. RANDLETT WALSTER

IN OPPOSITION TO MOTION TO DISMISS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELINE GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADREE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated,

Plaintiffs,

-against-

THE CITY OF NEW YORK; ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; UNITED FEDERATION OF TEACHERS WELFARE FUND,

Defendants.

74 Civ. 304 (WK)

AFFIDAVIT

Affidavit of K. Randlett Walster

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

K. RANDLETT WALSTER, being duly sworn, deposes and says:

1. I make this affidavit in opposition to defendants' Social Services Employees Union ("SSEU") and SSEU Welfare Fund ("Fund") motion to dismiss plaintiffs' complaint.

2. In support of their motion for dismissal, defendants allege that this Court lacks subject matter jurisdiction of the claims against the SSEU and the Fund as none of the six women alleging causes of action against the SSEU and the Fund (plaintiffs Shah, Padwee, Blitz, Zises, Mills and Pass) obtained notices from the Equal Employment Opportunity Commission ("EEOC") stating that they were entitled to commence a federal action.

A. Plaintiff Mills filed charges with the EEOC against defendant New York City Health and Hospitals Corp., defendant Associated Hospital Service, Inc., and Health Insurance Plan of Greater New York. She obtained a right to sue letter for an action against these parties on January 16, 1974, which is annexed hereto as Exhibit A.

Plaintiff Mills also filed charges with the New York City Commission on Human Rights naming defendants SSEU, the Fund, New York City, New York City Health and Hospitals Corporation,

and Associated Hospital Service, Inc. A copy of the Commission's determination of probable cause in this action is annexed as Exhibit B.

B. Plaintiff Zises filed charges with the EEOC against defendants Associated Hospital Service, Inc., Blue Shield (United Medical Service, Inc.) and District Council 37. She obtained right to sue letters May 10, 1974 which are annexed hereto as Exhibits C and D.

Plaintiff Zises also filed charges with the EEOC against defendant New York City and New York City's Department of Social Services. She has been informed by the United States Department of Justice that she is entitled to a right to sue letter for an action against these defendants and I have requested the letter be issued.

C. Plaintiff Shah filed a complaint with the EEOC naming the New York City Bureau of Child Welfare, defendants Associated Hospital Service, Group Health, Inc. and Blue Shield (United Medical Service, Inc.). I have been informed by Mr. Ralph Munoz of the EEOC in New York that plaintiff Shah is entitled to a right to sue letter for an action against these defendants. Plaintiffs are obtaining this letter and it will be presented to the Court at the argument on defendants' motions May 17, 1974.

Plaintiff Shah also filed charges with the New York City Commission on Human Rights naming New York City Department of Social Services, defendants SSEU, the City of New York, Group Health, Inc. and Associated Hospital Service. A copy of the Commission's determination of probable cause in this action is annexed as Exhibit E.

D. Plaintiff Padwee filed charges with the EEOC naming the New York City Department of Social Services, defendants SSEU, the Fund, Group Health Insurance Incorporated, Associated Hospital Service, and the City of New York. Mr. Munoz has informed me that plaintiff Padwee will be entitled to right to sue letters for an action against these defendants May 15, 1974. They will be presented to the Court at argument May 17, 1974.

Plaintiff Padwee also filed charges at the City Commission against the New York City Department of Social Services, defendants SSEU, the Fund, New York City, and Group Health Incorporated. A copy of the Commission's determination of probable cause in this action is annexed as Exhibit F.

3. None of these letters from the EEOC informing plaintiffs of their entitlement to commence a federal action was filed with plaintiffs' complaint as they had not been received at that time.

ONLY COPY AVAILABLE

4. Plaintiffs Blitz and Pass did not file charges with the EEOC. However, plaintiff Pass filed a complaint with the New York City Commission on Human Rights naming defendant Associated Hospital Service and New York City's Human Resources Administration.

Plaintiff Blitz filed a complaint with the New York City Commission on Human Rights naming the New York City Department of Social Services, defendants SSEU, the Fund, New York City, United Medical Service, Inc., and Associated Hospital Service, Inc. A copy of the Commission's determination of probable cause in this action is annexed as Exhibit G.

5. Thus of the six women asserting claims against the SSEU and the Fund, plaintiff Padwee is entitled to right to sue letters permitting her to prosecute a federal action against these defendants. Plaintiffs Mills, Blitz and Padwee filed administrative complaints against these defendants with the City Commission on Human Rights charging them with sex discrimination. Plaintiff Shaw filed a complaint with the City Commission naming the SSEU.

6. Plaintiffs Robertson, Justic, Cantelmi, Boyarsky and Carter have also received right to sue letters naming other

ONLY COPY AVAILABLE

defendants in this action. I am submitting those letters to the Court for the record at this time as Exhibits H, I, J, K and L.

7. In their memorandum, defendants also argue that these plaintiffs should have made a demand for disability benefits to the Fund and that the absence of such a demand precludes assertion of a cause of action here. I am annexing a copy of relevant portions of the Fund's booklet describing benefits available under its plan as Exhibit M. The description of the disability benefit plan therein specifically excludes "disability due to pregnancy, or resulting childbirth, miscarriage or abortion." As a result, it would have been futile for plaintiffs to demand benefits from defendant Fund prior to notification of the Fund's change in its policy permitting payment of disability benefits for disability due to pregnancy.

8. Defendants also urge that plaintiff Women in City Government United is not a proper party and should be dismissed. Plaintiffs submit herewith the affidavits of Bonny Lefkowitz and Susan Katzenberg, officers of

Affidavit of K. Randlett Walster

Women in City Government United (Exhibits N and O) opposing dismissal of this action with respect to the organizational plaintiff.

K. RANDLETT WALSTER

Sworn to before me this

15th day of May, 1974.

DORIAN BOWMAN
NOTARY PUBLIC-STATE OF NEW YORK
No. 60-0372375
Qualified in Westchester County
Commission Expires March 30, 19 75

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

Equal Employment Opportunity Commission

Notice of Right to Sue to Mrs. Pam Mills

EXHIBIT A

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE JAN 16 1974

TO:	FROM:
Mrs. Pam Mills 2226 Loring Place Bronx, New York 10453	Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:

- ☐ NO REASONABLE CAUSE
- ☒ UNTIMELY CHARGE
- ☐ NO JURISDICTION
- ☐ FAILURE TO PROCEED

EEOC REPRESENTATIVE: Ralph Munoz, District Counsel

TELEPHONE NUMBER	CASE/CHARGE NUMBER
264-7161	TNY 3-0720

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

for Ralph Munoz
District Director

cc:

President
New York City Health & Hospitals Corp.
125 Worth Street
New York, New York 10013

President
Associated Hospital Service of New York
80 Lexington Avenue
New York, New York 10016

President
Health Insurance Plan of
Greater New York
625 Madison Avenue
New York, New York 10022

EEOC FORM 161 APR 73

CHARGING PARTY'S COPY

EXHIBIT B, ANNEXED TO FOREGOING AFFIDAVIT

The City of New York, Commission on Human Rights, Determination of Probable Cause on Complaint by Pamela Mills

EXHIBIT B

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

PAMELA MILLS,

- against -

Case No. 5794-CE-S

THE CITY OF NEW YORK, NEW YORK CITY HEALTH AND HOSPITALS CORPORATION, ASSOCIATED HOSPITAL SERVICE, SSEU WELFARE FUND, and LOCAL 371 of the SOCIAL SERVICES EMPLOYEES UNION,

---

On October 18, 1972 the above-named complainant(s) filed a verified complaint with the Commission on Human Rights charging the above-named respondent(s) with an unlawful discriminatory practice in violation of the Administrative Code of the City of New York.

After investigation, the Commission on Human Rights has determined that there is probable cause to believe that the respondent(s) have engaged in or are engaging in the unlawful discriminatory practice complained of. A copy of the determination is attached.

The New York City Administrative Code provides for the resolution of complaints by "conference, conciliation and persuasion" (Section B1-8.0). Accordingly, the respondent may contact Renee Rivkis at 566-5562 to establish a date for the

EXHIBIT B

first conciliation meeting. Failing to hear from you by Sept. 7 , we will notice the case for public hearing.

Dated: August 24, 1973

CITY COMMISSION ON HUMAN RIGHTS

BY: Preston David

Preston David
Executive Director

TO: Mrs. Pamela Mills, 2226 Loring Place, Apt. #4, Bronx, NY 10453
New York City Health and Hospitals Corp., 125 Worth St., NY,NY 10
Associated Hospital Service of New York, 80 Lexington Ave.,NY,NY
Social Services Employees Union Welfare Fund, 817 Broadway, NY,NY
Local 371, Social Services Employees Union Welfare Fund,
817 Broadway, NY,NY

Corporation Counsel City of New York, Municipal Bldg.,. . .

EXHIBIT C, ANNEXED TO FOREGOING AFFIDAVIT

Equal Employment Opportunity Commission

Notice of Right to Sue to Mrs. Linda Zises

EXHIBIT C

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE MAY 10 1974

TO:	FROM:
Mrs. Linda Zises 565 West End Avenue New York, New York 10024	Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:

- ☐ NO REASONABLE CAUSE
- ☒ UNTIMELY CHARGE
- ☐ NO JURISDICTION
- ☐ FAILURE TO PROCEED

EEOC REPRESENTATIVE: Ralph Munoz, District Counsel

TELEPHONE NUMBER	CASE/CHARGE NUMBER
264-7161	TNY 3-0001

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

Jacob Hoff
Acting District Director

cc:

Director
Associated Hospital Service of New York
80 Lexington Avenue
New York, New York

President
Blue Shield
2 Park Avenue
New York, New York

EEOC FORM 161 APR 73

CHARGING PARTY'S COPY

EXHIBIT D, ANNEXED TO FOREGOING AFFIDAVIT

Equal Employment Opportunity Commission

Notice of Right to Sue to Mrs. Linda Zises

EXHIBIT D

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE MAY 10 1974

TO:	FROM:
Mrs. Linda Zises 565 West End Avenue New York, New York 10024	Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:

- ☐ NO REASONABLE CAUSE
- ☐ UNTIMELY CHARGE
- ☐ NO JURISDICTION
- ☐ FAILURE TO PROCEED

EEOC REPRESENTATIVE: Ralph Munoz, District Counsel

TELEPHONE NUMBER: 264-7161

CASE/CHARGE NUMBER: TNY 3-0005

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

Jeddiah Holt
Acting District Director

cc:

President
District Council 37
365 Broadway
New York, New York

EEOC FORM APR 73 161

CHARGING PARTY'S COPY

EXHIBIT E, ANNEXED TO FOREGOING AFFIDAVIT

The City of New York, Commission on Human Rights, Determination of Probable Cause on Complaint by Linda Shah

EXHIBIT E

DETERMINATION AND ORDER AFTER INVESTIGATION

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

LINDA SHAH,

- against -

Case No. 5809-J

THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, GROUP HEALTH INSURANCE, ASSOCIATED HOSPITAL SERVICE, and LOCAL 371 OF THE SOCIAL SERVICES EMPLOYEES UNION,

---

On October 16, 1972 the above-named complainant(s) filed a verified complaint with the Commission on Human Rights charging the above-named respondent(s) with an unlawful discriminatory practice in violation of the Administrative Code of the City of New York.

After investigation, the Commission on Human Rights has determined that there is probable cause to believe that the respondent(s) has have engaged in or are engaging in the unlawful discriminatory practice complained of. A copy of the determination is attached.

The New York City Administrative Code provides for the resolution of complaints by "conference, conciliation and persuasion" (Section B1-8.0). Accordingly, the respondent may contact Renee Rivkis at 566- 5562 to establish a date for the

EXHIBIT E

first conciliation meeting. Failing to hear from you by Sept. 7 , we will notice the case for public hearing.

Dated: August 24, 1973

CITY COMMISSION ON HUMAN RIGHTS

BY: Preston David

Preston David
Executive Director

TO: Mrs. Linda Shah, 181 Berkley Place, Brooklyn, New York
The New York City Department of Social Services,
80 Lafayette Street, New York, New York 10013
Group Health Insurance, 227 West 40 Street, New York, NY
Associated Hospital Service of New York, 80 Lexington Ave.,NY,NY
Local 371 of the Social Services Employees Union Welfare Fund,
817 Broadway, New York, NY

Local 371- Social Services Employees Union, 817 Broadway, NY,NY
Corporation Counsel of the City of New York , Municipal Building,
New York, NY.

EXHIBIT F, ANNEXED TO FOREGOING AFFIDAVIT

The City of New York, Commission on Human Rights, Determination of Probable Cause on Complaint by Susan Padwee

EXHIBIT F

DETERMINATION AND ORDER AFTER INVESTIGATION

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

GILIAN PALMER,	
- against -	Case No. 5899-J-S
THE CITY OF NEW YORK, CITY OF NEW YORK DEPARTMENT OF SOCIAL SERVICES, LOCAL 371-SSEU, GHI, BLUE CROSS, SSEU-LOCAL 371 WELFARE FUND,	

On January 12, 1973 the above-named complainant(x) filed a verified complaint with the Commission on Human Rights charging the above-named respondent(s) with an unlawful discriminatory practice in violation of the Administrative Code of the City of New York.

After investigation, the Commission on Human Rights has determined that there is probable cause to believe that the respondent(s) ~~has~~have engaged in or ~~is~~are engaging in the unlawful discriminatory practice complained of. A copy of the determination is attached.

The New York City Administrative Code provides for the resolution of complaints by "conference, conciliation and persuasion" (Section B1-8.0). Accordingly, the respondent may contact Renee Rivkin at 566-5562 to establish a date for the

EXHIBIT F

first conciliation meeting. Failing to hear from you by Sept. 7 we will notice the case for public hearing.

CITY COMMISSION ON HUMAN RIGHTS

Dated: August 24, 1973

BY: s/Preston David
Preston David
Executive Director

TO: Mrs. Susan Padwee, 42 West 65th Street, New York, New York 10023
Corporation Counsel of the City of New York, Municipal Bldg., NY, NY
City of New York Department of Social Services, 250 Church St., NY, NY
Local 371-Social Services Employees Union, 817 Broadway, NY, NY
Group Health Insurance, 227 West 40 Street, New York, New York
Associated Hospital Service of New York, 80 Lexington Ave., NY, NY
Local 371-Social Services Employees Union Welfare Fund,
817 Broadway, NY,NY

EXHIBIT G, ANNEXED TO FOREGOING AFFIDAVIT

The City of New York, Commission on Human Rights, Determination of Probable Cause on Complaint by Emily Blitz

EXHIBIT G

DETERMINATION AND ORDER AFTER INVESTIGATION

THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS

EMILY BLITZ,

- against -

Case No. 5915-J-S

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF SOCIAL SERVICES, LOCAL 371-SSEU, BLUE SHIELD MAJOR MEDICAL, BLUE CROSS, SSEU-WELFARE FUND,

---

On January 23, 1973 the above-named complainant(s) filed a verified complaint with the Commission on Human Rights charging the above-named respondent(s) with an unlawful discriminatory practice in violation of the Administrative Code of the City of New York.

After investigation, the Commission on Human Rights has determined that there is probable cause to believe that the respondent(s) ~~has~~ have engaged in or ~~is~~ are engaging in the unlawful discriminatory practice complained of. A copy of the determination is attached.

The New York City Administrative Code provides for the resolution of complaints by "conference, conciliation and persuasion" (Section B1-8.0). Accordingly, the respondent may contact Renee Rivkis at 566-5562 to establish a date for the

EXHIBIT G

first conciliation meeting. Failing to hear from you by Sept 7 , we will notice the case for public hearing.

CITY COMMISSION ON HUMAN RIGHTS

Dated: August 27, 1973

BY: Preston David
Preston David
Executive Director

CC: Mrs. Emily Blitz, 1401 55th Street, Brooklyn, New York
Corporation Counsel of the City of New York, Municipal Bldg., NY,NY
New York City Department of Social Services, 250 Church St., NY,NY
Local 371-Social Services Employees Union, 817 Broadway, NY,NY
United Medical Service, Inc., 2 Park Avenue, New York, NY
Associated Hospital Service of New York, 80 Lexington Ave., NY,NY
Social Services Employees Union Welfare Fund, 817 Broadway, NY,NY

EXHIBIT H, ANNEXED TO FOREGOING AFFIDAVIT

Equal Employment Opportunity Commission

Notice of Right to Sue to Ms. Barbara Robertson

EXHIBIT H

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE JAN 16 1974

TO:	FROM:
Ms. Barbara Robertson 97 Tracey Place Englewood, New Jersey 07631	Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007
THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON: ☐ NO REASONABLE CAUSE ☒ UNTIMELY CHARGE ☐ NO JURISDICTION ☐ FAILURE TO PROCEED	EEOC REPRESENTATIVE Ralph Munoz, District Counsel
	TELEPHONE NUMBER: 264-7161 — CASE/CHARGE NUMBER: TNY 3-0776

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

for Ralph Munoz
District Director

cc:

President
New York City Board of Education
110 Livingston Street
Brooklyn, New York 11201

President
Associated Hospital Service
of New York
80 Lexington Avenue
New York, New York 10016

President
United Medical Service
2 Park Avenue
New York, New York 10016

EXHIBIT I, ANNEXED TO FOREGOING AFFIDAVIT

Equal Employment Opportunity Commission

Notice of Right to Sue to Mrs. Elaine Justic

EXHIBIT I

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE JAN 16 1974

TO:	FROM:
Mrs. Elaine Justic 140-11 Oak Avenue Flushing, New York 11355	Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:

- ☐ NO REASONABLE CAUSE
- ☒ UNTIMELY CHARGE
- ☐ NO JURISDICTION
- ☐ FAILURE TO PROCEED

EEOC REPRESENTATIVE: Ralph Munoz, District Counsel

TELEPHONE NUMBER	CASE/CHARGE NUMBER
264-7161	TNY 3-1198

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

for Ralph Munoz
District Director

cc:

Director
Bureau of Child Welfare
80 Lafayette Street
New York, New York

President
Assoc. Hospital Service of N.Y.
80 Lexington Avenue
New York, New York 10016

President
District Council 37, American Federation of State, County & Municipal Employees
365 Broadway
New York, New York 10013

President
District Council 37, Health & Security Plan
365 Broadway
New York, New York 10013

EEOC FORM APR 73 161 CHARGING PARTY'S COPY

EXHIBIT J, ANNEXED TO FOREGOING AFFIDAVIT

Equal Employment Opportunity Commission

Notice of Right to Sue to Mrs. Alicia Cantelmi

EXHIBIT J

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE JAN 16 1974

TO:	FROM:
Mrs. Alicia Cantelmi 1918 East 38th Street Brooklyn, New York 11234	Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:

- ☐ NO REASONABLE CAUSE
- ☐ UNTIMELY CHARGE
- ☐ NO JURISDICTION
- ☐ FAILURE TO PROCEED

EEOC REPRESENTATIVE: Ralph Munoz, District Counsel

TELEPHONE NUMBER	CASE/CHARGE NUMBER
264-7161	TNY 3-1472

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

for Ralph Munoz
District Director

cc:

Superintendent
N.Y.C. Board of Education
65 Court Street
Brooklyn, New York 11201

President
United Federation Teachers Welfare Fund
260 Park Avenue South
New York, New York 10010

EEOC FORM APR 73 161 CHARGING PARTY'S COPY

EXHIBIT K, ANNEXED TO FOREGOING AFFIDAVIT

Equal Employment Opportunity Commission

Notice of Right to Sue to Mrs. Leslie S. Boyarsky

EXHIBIT K

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE JAN 16 1974

TO:	FROM:
Mrs. Leslie S. Boyarsky 777 Foster Avenue Brooklyn, New York 11230	Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007

YOUR CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:

- ☐ NO REASONABLE CAUSE
- ☒ UNTIMELY CHARGE
- ☐ NO JURISDICTION
- ☐ FAILURE TO PROCEED

EEOC REPRESENTATIVE	
Ralph Munoz, District Counsel	
TELEPHONE NUMBER	CASE/CHARGE NUMBER
264-7161	TNY 3-1540

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

for Ralph Munoz
District Director

cc:

Superintendent
N.Y.C. Board of Education
110 Livingston Street
Brooklyn, New York 11201

President
District Council 37
American Federation of State,
County & Municipal Employees
365 Broadway, New York, N.Y. 10013

President
District Council 37
Health & Security Plan
365 Broadway, New York, N.Y. 10013

President
Assoc. Hospital Service of N.Y.
80 Lexington Ave., New York, N.Y.

President
Group Health Insurance
2227 West 40th St., New York, N.Y.

EEOC FORM APR 73 161 CHARGING PARTY'S COPY

EXHIBIT L, ANNEXED TO FOREGOING AFFIDAVIT

Equal Employment Opportunity Commission

Notice of Right to Sue to Ms. Eula Carter

EXHIBIT L

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE JAN 16 1974

...s. Eula Carter ...31-34 135th Street ...outh Ozone Park, New York	FROM: Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007
...RGE HAS BEEN DISMISSED FOR THE FOLLOWING ...SON: ...O REASONABLE CAUSE ☒ UNTIMELY CHARGE ...NO JURISDICTION ☐ FAILURE TO PROCEED	EEOC REPRESENTATIVE Ralph Munoz, District Counsel
	TELEPHONE NUMBER: 264-7161 — CASE/CHARGE NUMBER: TNY 3-1563

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

for Ralph Munoz
District Director

cc:

...irector
...Y.C. Department of Social Services
...50 Church Street
...ew York, New York

...resident
...ssoc. Hospital Service of N.Y.
...0 Lexington Avenue
...ew York, New York 10016

President
District Council 37
Health & Security Plan
365 Broadway, New York, N.Y.

President
District Council 37
American Federation of State,
County & Municipal Employees
365 Broadway, New York, N.Y.

EXHIBIT M, ANNEXED TO FOREGOING AFFIDAVIT

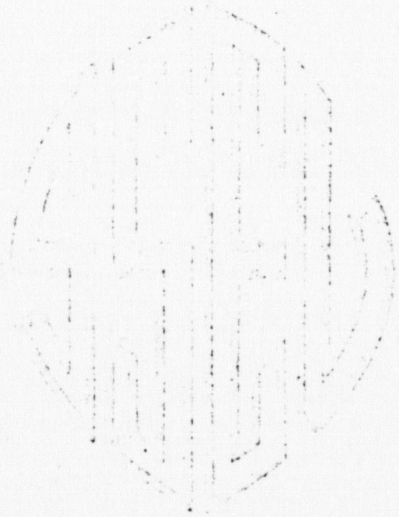
Social Service Employees Union, Local 371

Welfare Fund Plan of Benefits

EXHIBIT M

Social Service Employees Union

Local 371



MEARS FIELD

PLAN

of

BENEFITS

EXHIBIT M

SOCIAL SERVICE EMPLOYEES UNION
LOCAL 371 WELFARE FUND

BOARD OF TRUSTEES

ALBERT E. ALEXANDER
Chairman

EDWARD ZIMMERMAN
Secretary

FRANK FLORES
Treasurer

ADMINISTRATOR
Walter J. Casteel

COUNSEL
Mirkin, Barre, Saltzstein, Gordon & Levine

CERTIFIED PUBLIC ACCOUNTANTS
Gould & Kobrick

CONSULTANTS AND ACTUARIES
Martin E. Segal Company

WEEKLY DISABILITY BENEFITS

ELIGIBILITY

Welfare Fund Weekly Disability Benefits will be paid to you under the following conditions:

1. You are a "covered member" at the time your disability begins.
2. You are unable to perform the duties of your occupation as a result of illness or accidental injury.
3. You are under the care of a licensed physician.
4. You are on approved sick leave from the City of New York.
5. You have served a waiting period of 30 calendar days from the first day of absence during all of which time you were unable to work.

Disability Benefits are payable whether or not you are using your Annual or Sick Leave. (See claims procedure on page 13.)

BENEFIT AMOUNT* AND DURATION

The Fund now pays a benefit of up to $65 a week* (but not to exceed one-half of your weekly salary at the time of disability) for up to a total of 39 weeks of disability during a two-year period.

*Note — Effective July 1, 1972 the Disability Benefit amount will be increased to a maximum of $75 per week.

PERIOD OF DISABILITY

1. A disability maximum of 39 weeks will be provided for each separate disability, but in no event will benefits for more than 39 weeks of disability be provided in any 24-month period.

2. Relapse — It will be presumed that a covered member returning to work for 30 days or less who again becomes disabled from the same cause has suf-

ed a relapse. In that event, if he is otherwise eligible, he may resume receiving his disability benefits if the 39-week maximum has been reached without having to satisfy a new 30-day waiting period. will be considered a new period of disability (requiring an additional 30-day waiting period) if a vered employee returns to work and is on active y status for more than 30 days.

No more than 39 weeks of disability benefits pay able during any 24 month period.

CLUSIONS AND LIMITATIONS

disability benefits shall be payable for any period:

A. During which a full salary is received as a result of such disability. (However, if a covered member is receiving salary while disabled because of accrued sick time or annual leave, he or she shall be entitled to disability benefits under this plan.)

B. During which benefits in excess of the amount of Welfare Fund disability benefits are paid or payable under any Workmen's Compensation Law, occupational disease law, Social Security law, or similar legislation of the state or federal government.

C. During which benefits are paid or payable under any unemployment compensation or similar laws.

D. During which the covered member is not under the care of a licensed physician.

E. During which a covered member is on terminal leave which began prior to the onset of disability.

F. Of disability due to pregnancy, or resulting childbirth, miscarriage, or abortion.

G. Of disability due to an intentional self-inflicted injury.

As indicated previously, Welfare Fund Disability Benefits are reduced by the amount of any benefits paid or payable under any Social Security law, Workmen's Compensation law, occupational disease law or similar legislation of the state or federal government.

In order to receive benefits for more than 15 weeks of continuous disability you must apply for Social Security Disability benefits and you must send a copy of the determination letter you receive to the Fund Office.

If, for some reason, Social Security does not make a determination on your claim prior to the 27th week of disability, Welfare Fund Disability Benefits will be continued to you. However, if you later receive a favorable determination from Social Security and receive a retroactive award of benefits, it will be necessary for you to repay the amount of Welfare Fund Disability Benefits you received during the period for which Social Security benefits were paid.

CLAIMS PROCEDURE

Disability Claim Forms may be obtained from the Fund Office. In order to receive benefits both your portion and your physician's portion of the Claim Form must be completed. The Fund Office will request periodic evidence of continued disability from your physician.

The Fund Office may require that a claimant be examined by another physician. In such event, the examination will be performed by a physician chosen by the Fund, at no expense to the claimant.

EXHIBIT N, ANNEXED TO FOREGOING AFFIDAVIT

Affidavit of Susan Katzenberg

EXHIBIT N

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

WOMEN IN CITY GOVERNMENT UNITED, et al., :

Plaintiffs, :

-against- : 74 Civ. 304 (W.K.)

THE CITY OF NEW YORK, et al., : AFFIDAVIT

Defendants. :

- -X

SUSAN KATZENBERG, being duly sworn, deposes and says:

I am Treasurer of Women in City Government United and make this affidavit in opposition to defendants' motion to dismiss Women in City Government United ("WICGU") as a party plaintiff.

As Treasurer of WICGU, I am responsible for mainainance of membership records. I have inspected the membership records and as of May 14, 1974, WICGU had 681 dues paying members.

I have also inspected WICGU's membership records to determine which of the named plaintiffs in this action

EXHIBIT N

are members and I have found that all of the above-named individuals are members.

Susan Katzenberg
SUSAN KATZENBERG

Sworn to before me this

15 day of May, 1974.

Sidney Kaufman

SIDNEY KAUFMAN - No - 7183480
NOTARY PUBLIC - STATE OF NEW YORK
QUALIFIED IN KINGS COUNTY
COMMISSION EXPIRES 3-30-76

EXHIBIT O, ANNEXED TO FOREGOING AFFIDAVIT

Affidavit of Bonny Lefkowitz

EXHIBIT O

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

WOMEN IN CITY GOVERNMENT UNITED, et al., :

Plaintiffs, :

-against- : 74 Civ 304 (W.K.)

THE CITY OF NEW YORK, et al., : AFFIDAVIT

Defendants. :

- -X

BONNY LEFKOWITZ, being duly sworn, deposes and says:

I am Vice-President of Women in City Government United and make this affidavit in opposition to defendants' motion to dismiss Women in City Government United ("WICGU") as a party plaintiff.

I have held the position of Vice-President since January, 1973 and am fully familiar with WICGU's activities in its effort to end sex discrimination in terms and conditions of employment for all City employees. WICGU has undertaken a variety of activities in this connection, one of the most important of which has been its effort over the past two years to end discrimination in the health and hospitalization plans, leave policies and

disability benefit plans for City employees.

As the complaint in this action alleges, these plans provide discriminatory treatment for pregnancy and maternity. WICGU has attempted to remedy this situation through meetings with defendants New York City, its related agencies and unions representing City employees. I have participated in such discussions. However, they have not been successful in eradicating the discriminatory plans and policies to which defendants evidently subscribe.

WICGU has distributed literature to City employees on equal rights; it has referred City employees with complaints of sex discrimination to administrative agencies; it has collected data on sex discrimination in City employment, and in general taken all appropriate measures it could to attempt to remedy this situation, including its participation in the instant action.

WICGU has been a leader in this struggle for equal rights. Its experience over the past two years led its leadership to the conclusion that a campaign against sex discrimination in City employment, to be effective, would have to be waged on a comprehensive basis since the multitude of agencies and organizations participating in discriminatory plans and policies and the

bureaucratization of City government make it nearly impossible for individual complainants to challenge effectively these plans and policies. As an organization, WICGU will be of assistance to the individual aggrieved parties named in this action in disproving the adage that "You can't fight City Hall."

The affidavit of Susan Katzenberg submitted herewith reveals that all the named defendants are WICGU members. It was to protect these City employees and others from the discrimination to which they have been subjected (as is alleged more fully in plaintiffs' complaint) that WICGU was formed. Consequently, its interest is coextensive with that of the named plaintiffs and the unnamed class members, the vindication of all of whose rights to equality in employment is WICGU's most serious concern.

/s/ Bonny Lefkowitz
BONNY LEFKOWITZ

Sworn to before me this
15 day of May, 1974.

AFFIDAVIT OF K. RANDLETT WALSTER

SUBMISSION OF EQUAL EMPLOYMENT OPPORTUNITY

COMMISSION NOTICES OF RIGHT TO SUE TO

LINDA SHAH AND SUSAN PADWEE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

CAPTION

K. RANDLETT WALSTER, being duly sworn, deposes and says:

I have annexed hereto notices from the Equal Employment Opportunity Commission to plaintiffs Shah and Padwee, stating that they are entitled to commence a federal action against the following defendants in this action: Social Services Employees Union, Social Services Employees Union Welfare Fund, New York City, Group Health Insurance (Group Health Incorporated), Associated Hospital Service and Blue Shield (United Medical Service, Inc.).

/s/ K. Randlett Walster

K. RANDLETT WALSTER

Sworn to before me this

16 day of May, 1974.

/s/ Herbert Jordan

Notary Public

HERBERT JORDAN
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4506463 Qual. in N. Y. County
Commission Expires March 30, 1975

NOTICE OF RIGHT TO SUE - LINDA SHAH
ANNEXED TO FOREGOING AFFIDAVIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE MAY 15 1974

D: Ms. Linda Shah 181 Berkeley Place Brooklyn, New York 11217	FROM: Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007
IS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING EASON: ☐ NO REASONABLE CAUSE ☒ UNTIMELY CHARGE ☐ NO JURISDICTION ☐ FAILURE TO PROCEED	EEOC REPRESENTATIVE Ralph Munoz, District Counsel
	TELEPHONE NUMBER: 264-7161 / CASE/CHARGE NUMBER: TNY 3-0542

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

Fredrica Holt
Acting District Director

cc:

City of New York Bureau of Child Welfare
80 Lafayette Street
New York, New York

Group Health Insurance
227 West 40th Street
New York, New York

Blue Shield of Greater N.Y.
2 Park Avenue
New York, New York 10016

Blue Cross of Greater New York
622 Third Avenue
New York, New York 10017

EEOC FORM APR 73 161 CHARGING PARTY'S COPY

NOTICE OF RIGHT TO SUE - SUSAN PADWEE
ANNEXED TO FOREGOING AFFIDAVIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE MAY 15 1974

TO:	FROM:
Ms. Susan Padwee 521 21th Street Brooklyn, New York 11215	Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007

THIS CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON:

- ☐ NO REASONABLE CAUSE
- ☐ UNTIMELY CHARGE
- ☐ NO JURISDICTION
- ☐ FAILURE TO PROCEED

EEOC REPRESENTATIVE	
Ralph Munoz, District Counsel	
TELEPHONE NUMBER	**CASE/CHARGE NUMBER**
264-7161	TNY 4-0651

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

Fredrick Holt
Acting District Director

cc:

Group Health Insurance
227 West 40th Street
New York, New York

Associated Hospital Service of New York
80 Lexington Avenue
New York, New York

Local 371 - Social Services Employees Union Welfare Fund
817 Broadway
New York, New York

NOTICE OF RIGHT TO SUE - SUSAN PADWEE
ANNEXED TO FOREGOING AFFIDAVIT

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NOTICE OF RIGHT TO SUE MAY 15 1974

Ms. Susan Padwee 521 12th Street Brooklyn, New York 11215	FROM: Equal Employment Opportunity Comm. New York District Office 90 Church Street, Room 1301 New York, New York 10007
CHARGE HAS BEEN DISMISSED FOR THE FOLLOWING REASON: ☒ NO REASONABLE CAUSE ☐ UNTIMELY CHARGE ☒ NO JURISDICTION ☐ FAILURE TO PROCEED	EEOC REPRESENTATIVE Ralph Munoz, District Counsel
	TELEPHONE NUMBER: 264-7161 CASE/CHARGE NUMBER: TNY 4-0650

If you want to pursue your charge further, you have the right to sue the respondent(s) named in this case in the United States District Court for the area where you live. **If you decide to sue, you must do so within ninety (90) days from the receipt of this Notice; otherwise your right is lost.**

If you do not have a lawyer or are unable to obtain the services of a lawyer, take this Notice to the United States District Court which may, in its discretion, appoint a lawyer to represent you.

An information copy of this Notice has been sent to the respondent(s) named in this case.

If you have any questions about your legal rights or need help in filing your case in court, call the EEOC representative named above.

Fredrick Stabt
Acting District Director

cc:

Corporation Counsel of the City of N.Y.
Municipal Building
New York, New York

City of New York Department of Social Services
250 Church Street
New York, New York

Local 371, Social Service Employees Union
817 Broadway
New York, New York

FORM APR 73 161 CHARGING PARTY'S COPY

AFFIDAVIT OF GERALD J. BARRE

IN SUPPORT OF MOTION TO DISMISS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELINE GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER and LINDA SHAH, on behalf of themselves and other similarly situated,	74 Civ. 304 Judge Knapp
Plaintiffs,	
-against-	AFFIDAVIT
THE CITY OF NEW YORK; ABRAHAM BEAME AS MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS and UNITED FEDERATION OF TEACHERS WELFARE FUND,	
Defendant.	

Affidavit of Gerald J. Barre

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

GERALD J. BARRE, being duly sworn, deposes and says:

1. I am a member of the firm of MIRKIN, BARRE, SALTZSTEIN & GORDON, P. C., attorneys for the defendants, SOCIAL SERVICES EMPLOYEES UNION LOCAL 371 (sued herein as "SOCIAL SERVICES EMPLOYEES UNION", hereinafter sometimes referred to as "LOCAL 371") and SOCIAL SERVICES EMPLOYEES UNION LOCAL 371 WELFARE FUND (sued herein as "SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND", hereinafter sometimes referred to as "the FUND") and make this affidavit in reply and in opposition to Plaintiffs' cross-motion for an extension of time within which to file a motion for a determination of the class; and for an order of protection in objection of furnishing interrogatories propounded by the defendants on the basis that if the motion made by LOCAL 371 and the FUND is granted, the furnishing of such interrogatories supplies no useful purpose and will be burdensome and oppressive; or in the alternative, for an order extending time to answer or objecting thereto for a period of sixty (60) days after a class determination is made herein.

2. The affidavit of K. Randlett Walster, Esq. in opposition to the primary motion made by the defendants, LOCAL 371 and the FUND, sworn to the 15th day of May, 1974, contains concess-

ions of fact which clearly support plaintiffs' motion for a dismissal herein by reason of the lack of jurisdiction over the subject matter of the action.

3. In regard to the six plaintiffs who have pleaded with respect to LOCAL 371 and/or the FUND, namely, SHAH, PADWEE, BLITZ, ZISES, MILLS and PASS, the only one who is alleged to have filed charges with the Equal Employment Opportunity Commission ("EEOC") against those defendants is the plaintiff PADWEE.

4. Ms. Walster does state in paragraph 2(d) of her affidavit that plaintiff, PADWEE, filed charges with the EEOC naming inter alia, LOCAL 371 and the FUND, and that PADWEE will not be entitled to a right to sue said defendants letter until May 15, 1974. In this regard, attached hereto, as Exhibit "A", is a letter dated April 15, 1974 where for the first time almost three months from the filing of the summons and complaint herein, there was a charge transmitted to the FUND . The charge was in behalf of the plaintiff, PADWEE. In response thereto, your deponent furnished the EEOC, by letter of May 13, 1974, a copy of which is attached hereto and marked Exhibit "B" and incorporated herein by reference, absolute documentary proof establishing payment to Ms. PADWEE and documenting by admissions that no valid claim in fact exists.

5. Upon information and belief, LOCAL 371 has not been served with charges by any of said six plaintiffs and the source of your deponent's information is Mr. Patrick Knight, President of said LOCAL 371.

6. As a matter of fact, Ms. Walster concedes in paragraph 3 of her affidavit that:

> "None of these letters from the EEOC informing plaintiffs of their entitlement to commence a federal action was filed with the plaintiffs' complaint as they had not been received at the time." (Emphasis added)

7. A conclusory statement appears in Ms. Walster's affidavit and in the brief submitted in behalf of plaintiff that it would have been futile for plaintiffs to demand benefits from the FUND prior to the FUND's change in its policy permitting payment of disability benefits for disability due to pregnancy and the basis for such conclusion appears to be the appendage to such affidavit of the FUND's booklet. The fallacy of this assumption is proven by a perusal of paragraph 18 of the complaint and paragraph 2 of the affidavit of Frederick Charap, sworn to the 15th day of April, 1974 in support of said defendant's motion. In paragraph 18 of the complaint, it is alleged that plaintiff, SHAH, commenced maternity leave on November 27, 1972. Mr. Charap, in paragraph 2 of his affidavit, establishes that Ms. SHAH was, in fact, paid a full disability benefit cover-

ing a period of 39 weeks which included eight weeks minus one day for her disability caused by her pregnancy, said period of time forming a part of the 39-week maximum. Payment to Ms. SHAH, is the clearest demonstration that "futility" did not exist so as to excuse the failure to properly apply to the FUND for benefits.

8. The affidavits of Ms. Bonnie Lefkowitz and Ms. Susan Katzenberg, which appear as Exhibits O and N to Ms. Walster's affidavit, clearly indicate that WOMEN IN CITY GOVERNMENT UNITED ("WICGU") is not a proper party plaintiff. Ms. Bonnie Lefkowitz views WICGU as an instrument for fighting City Hall. What other purposes it has, or what the membership composition of WICGU is, has not been set forth. While she claims that she is familiar with WICGU's activities in its effort to end sex discrimination in terms of conditions of employment for all City employees, All City employees are not proper parties plaintiff to this action; nor do they form a class in this action. Furthermore, she does not allege that WICGU is composed of City employees only nor, for that matter, that all City employees who are members of WICGU would be proper parties to this action or any class thereunder.

9. Ms. Katzenberg's affidavit similarly and singularly fails to establish the identity of the members of WICGU. She does state that as of May 14, 1974, WICGU had 681 paying members.

She does not specify whether they are male and/or female and whether membership of the organization is composed of City employees only or whether membership of such organization is composed of only people who might fall within a class of City employees. In fact, she only states that all of the plaintiffs (which must also include male plaintiffs) are members.

10. Plaintiffs have failed to substantiate or even offer one scintilla of probative fact to support a naked allegation that the defendant LOCAL 371 negotiated with City officials a bargaining agreement containing a discriminatory health and hospital plan. It is submitted that this omission is deliberate because Plaintiffs know that LOCAL 371 did not negotiate this benefit. The absence of evidence by plaintiffs on this corner-stone destroys their argument of a willful participation in joint activity with the State with respect to their causes of action under the 14th Amendment as against LOCAL 371 and the FUND.

11. Plaintiffs further concede that LOCAL 371 and the FUND are "relatively minor defendants" and it is suggested that such defendants should not be in this action at all. Of the six plaintiffs (excluding WICGU) which have pleaded against these defendants five never filed charges with EEOC and the one which did against the FUND (PADWEE) with respect to whom we are informed by plaintiffs will have a right to sue letter at the time of the hearing of this motion, has been paid and thus her claim in any event should be dismissed.

12. Alternatively, in view of the many motions and cross-motions now before this Court wherein various opposing relief have been requested it is earnestly urged that orderly steps and procedures be directed by the Court. It appears to your deponent that the first issues to be determined are the prime motion to dismiss the action, and that until there be a determination thereof, all further proceedings be stayed; and in the event the motion be denied in whole or in part, that orders then be entered permitting the filing of answers and then that discovery be permitted subject to such objections and motions as may be relevant thereto.

Dated: Great Neck, New York
May 20 , 1974.

Gerald J. Barre

Gerald J. Barre

Sworn to before me, this
20th day of May, 1974.

Notary Public

NOTARY PUBLIC, State of New York
No. 31-[illegible]
Qualified in Nassau County
Commission Expires March 30, 1975

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

Letter from Equal Employment Opportunity Commission to Social Services Employees Union Welfare Fund LOCAL 371, April 15, 1974

EXHIBIT A

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1301
NEW YORK, NEW YORK 10007
264-7161

April 15, 1974

Social Services Employees Union Welfare Fund LOCAL 371
817 Broadway
New York, N.Y.

Re: TNY4-0651 Padwee
vs. Local 371 Social Serv. Employees
Union Welfare Fund

Dear Sir or Madam:

Attached is a charge filed in the above-entitled case alleging a violation by your organization of Title VII of the Civil Rights Act of 1964, as amended. Your receipt of this letter constitutes legal service of this charge.

You are requested to respond to this charge and these particular allegations within fifteen (15) days of your receipt of this letter. You are also requested to provide information in regard to your compliance with Title VII as it relates to treatment of persons like Charging Party in your employ or seeking employment with your organization.

All of this information is subject to the legal provisions of Section 706 (b) and 709 (e) which bar making such information public prior to the institution of any proceeding under Title VII involving such information.

You are particularly requested to respond to Charging Party's allegation that she was denied maternity benefits equal to disability benefits afforded males. In this regard, please send us copies of disability and maternity plans (plan at time of alleged discrimination and current plan). In addition, please send us, any policy statements (past and present) relating to disability and maternity.

Exhibit "A"

It is imperative that you furnish us with detailed and clarifying information. When this information is received and analyzed, I will then determine if any further information is required for the determination.

When all the facts in controversy and relating to this charge are obtained I will issue to you and the Charging Party a Determination as to whether or not I find that there is reasonable cause to believe that Title VII has been violated.

If you have any problems in regard to this process please do not hesitate to contact me at (212) 264-7188 or write to me at the above address.

Thank you for your courtesy, confidence and cooperation in this matter.

Sincerely yours,

Freddie D. Holt
Acting District Director

Enclosures:

Copy of charge No TNY4-0651

EXHIBIT B, ANNEXED TO FOREGOING AFFIDAVIT

Letter from Gerald J. Barre to Equal

Employment Opportunity Commission

May 13, 1974

EXHIBIT B

May 13, 1974

Equal Employment Opportunity Commission
New York District Office
90 Church Street, Room 1301
New York, New York 10007

Re: TNY4-0651 Padwee -vs- Local 371 Social Service Employees Union Welfare Fund

Attention: Freddie D. Holt,
Acting District Director

Dear Mr. Holt:

Confirming our recent telephone conversation, please be advised that the charging party above-named is a named plaintiff in an action instituted in the United States District Court for the Southern District of New York under case number 74-Civil 304, and in which our client, Social Service Employees Union, Local 371 and Social Service Employees Union, Local 371 Welfare Fund are parties defendant.

The gravamen of the complaint against all of the parties, and which purports to be a class action, alleges violation of Title 7 of the Civil Rights Act of 1964 as amended and relates to maternity policy, etc. which appears to be the same charge contained in the charge appended to your letter of April 15, 1974 addressed to our client.

We have obtained from our client documentation which establishes that there was no discrimination whatsoever insofar as Ms. Padwee's disability resulting from pregnancy. As a matter of fact she was paid $480.00 and I submit herewith her proof of claim bearing date February 2, 1973; letter to her physician dated March 27, 1973; covering letter sent with check for $480.00 dated May 11, 1973 wherein she was advised that unless she agreed to be examined by a gynocologist employed by the Welfare Fund no further disability benefits would be paid as well as Mrs. Padwee's response of May 18, 1973 and our client's response of June 5th.

Ms. Padwee, we are advised, never responded to our client's

EXHIBIT B

suggestion that she be examined by a gynecologist and, therefore, to establish whether she was, in fact, disabled beyond the normal post-partum period of six weeks, which our client was advised by medical authorities is the normal period of disability after giving birth. Ms. Padwee's inaction in responding could only be interpreted that such examination would result in a finding of no further disability and, therefore, there remained nothing for our client to do in view of such inaction.

It must be stressed, and we believe, that the documentation attached hereto irrefutably negates any question or inference of discrimination, our client having treated the disability as any other medical disability without exception.

Under the circumstances the charge should be dismissed.

Very truly yours,

MIRKIN, BARRE, SALTZSTEIN
& GORDON, P. C.

By:_____
Gerald J. Barre

GJB/jm
Enclosures

EXHIBIT C, ANNEXED TO FOREGOING AFFIDAVIT

Letter from Social Service Employees Union

Local 371 Welfare Fund to Susan Padwee

June 5, 1973

EXHIBIT C

OCIAL SERVICE EMPLOYEES UNION LOCAL 371

WELFARE FUND

SSEU LOCAL 371

O FIFTH AVENUE • NEW YORK, N.Y. 10011 • TELEPHONE 691-81

TRUSTEES
BERT ALEXANDER
Chairman
WARD ZIMMERMAN
Secretary
ANK FLORES
Treasurer

LTER J. CANTEEL
Administrator

June 5, 1973

Susan Padwee
42 West 65th Street
New York, New York 10023

Dear Ms. Padwee:

Please accept my apologies for the delay in answering your letter which was received here on May 22. I was on vacation when it arrived and am just now catching up with things.

We are professionally advised that disability resulting from normal childbirth does not exceed six weeks. Your doctor did not indicate that you suffered any medical disability as a result of your delivery on March 8, 1973, and we issued disability benefits to you for a full six weeks post-partum.

Your Welfare Fund may be the only one in this country which covers pregnancy and maternity-related disabilities, and I hope that the benefits you received were helpful to you and your family.

Sincerely,

Judith Pilson

Judith Pilson

EXHIBIT D, ANNEXED TO FOREGOING AFFIDAVIT

Letter from Susan Padwee to Social Service Employees Union Welfare Fund, May 18, 1973

EXHIBIT D

42 West 65th Street

New York, New York 10023

May 18, 1973

MAY 221973

Ms. J. Pilson

SSEU Welfare Fund

80 Fifth Avenue

New York, New York

Re: Susan Padwee
Disability Benefits

Dear Ms, Pilson:

In a letter from the Fund dated 5/11/73, I was told that my disability benefits had been discontinued. Would you please tell me in writing the reason or reasons why these benefits were discontinued?? Also, would you please explain why the date of 4/20/73 was designated as the discontinuance date? Thank you very much.

Sincerely,

Susan Padwee

Susan Padwee

P.S. Please note that the $480 check you sent me was endorsed "under protest."

EXHIBIT E, ANNEXED TO FOREGOING AFFIDAVIT

Letter from Social Service Employees Union

Local 371 Welfare Fund to Susan Padwee

May 11, 1973

EXHIBIT E

OCIAL SERVICE EMPLO ES UNION LOCAL 371

WELFARE FUND

SSEU LOCAL 371

D FIFTH AVENUE • NEW YORK, N.Y. 10011 • TELEPHONE 691-8160

TRUSTEES
BERT ALEXANDER
Chairman
WARD ZIMMERMAN
Secretary
ANK FLORES
Treasurer

LTER J. CANTEEL
Administrator

May 11, 1973

Susan Padwee
42 West 65th St.
New York, N.Y.

Dear Ms. Padwee:

The enclosed check covers your disability due to pregnancy and childbirth.

As in all disability cases a 30-day waiting period must be served: thus since your last day worked was 2/5/73, your initial payment date is 3/8/73.

As your date of delivery was 3/8/73, and your doctor does not indicate medical complications, your disability must be considered terminated by 4/20/73. Thus the enclosed check covers the period of 3/8/73 through 4/20/73.

No additional disability benefits can be paid to you unless you agree to be examined by a gynecologist employed by the Welfare Fund and your disability is medically attested. If this is agreeable to you, please call this office so an appointment can be arranged for you.

Yours truly,

Walter Canteel

Walter Canteel
Administrator

EXHIBIT F, ANNEXED TO FOREGOING AFFIDAVIT

Letter from Social Service Employees Union

Local 371 Welfare Fund to Doctor Faison

March 27, 1973

EXHIBIT F

SOCIAL SERVICE EMPLOYEES UNION

WELFARE FUND

617 BROADWAY • NEW YORK, N. Y. 10003 • TELEPHONE 677-591
677-267

TRUSTEES
ALBERT ALEXANDER
Chairman
HOWARD ZIMMERMAN
Secretary
FRANK FLORES
Treasurer

WALTER J. CANTEEL
Administrator

March 27, 1973

Re: Susan Padwee

Dear Doctor Faison:

We have received a claim for disability benefits from Susan Padwee for disability resulting from pregnancy. Before we can determine whether this claim qualifies for payment under Fund regulations, we need additional medical information from you.

Can you provide the actual period of disability during which this patient was physically unable to perform the duties of her occupation from which she took maternity leave and briefly describe any medical complications.

We have enclosed a claim form for you to complete along with a self-addressed envelope.

Thank you for your cooperation.

Yours truly,

Walter Canteel
Administrator

cc: Susan Padwee

EXHIBIT G, ANNEXED TO FOREGOING AFFIDAVIT

Proof of Claim for Disability Benefits

Claimant's Statement from Susan Padwee

January 30, 1973

EXHIBIT G

817 Broadway, New York, N. Y. 10003

677-5919 677-2672

FEB2 1973

PROOF OF CLAIM FOR DISABILITY BENEFITS
CLAIMANT'S STATEMENT

NAME PADWEE, Susan
(Please Print)

SOCIAL SECURITY NO. 041-34-0964 PAYROLL TITLE Supervisor II (C.O.)

HOME ADDRESS 42 West 65th Street
Number Street

New York N.Y. 10023
Borough State Zip Code

HOME TELEPHONE NO. 799-4505 5. OFFICE TELEPHONE NO. 433-3481

DATE OF BIRTH 7/23/43 ANNUAL SALARY $ 14,585

WORK LOCATION Division of Adoption Services DEPARTMENT Social Services

DESCRIBE DISABILITY: (if injury state how, when and where it occurred)

pregnancy & childbirth
DOB 3/8/73

ON WHAT DATE DID YOU BECOME DISABLED? 2/5/73

DID YOU WORK THAT DAY? YES ☐ NO ☒

HAVE YOU SINCE WORKED? YES ☐ NO ☒

If YES, give dates:

ARE YOU RECEIVING WORKMEN'S COMPENSATION BENEFITS? YES ☐ NO ☒

ARE YOU STILL RECEIVING FULL PAYCHECKS FROM THE CITY? YES ☐ NO ☒

If NO, what was your last day paid? 2/2/73

I hereby claim Disability Benefits from the Social Service Employees Union Local 371 Welfare Fund and certify that for the period covered by this claim, I was disabled and that the foregoing statement is to the best of my knowledge true and complete.

DATE 1/30/73 SIGNATURE Susan Padwee

PLEASE HAVE YOUR DOCTOR COMPLETE THE PHYSICIAN'S STATEMENT. RETURN THIS CLAIM FORM TO: SSEU LOCAL 371 WELFARE FUND. 817 BROADWAY, NEW YORK, N. Y. 10003

EXHIBIT H, ANNEXED TO FOREGOING AFFIDAVIT

Proof of Claim for Disability Benefits

Physician's Statement from Doctor Faison

January 26, 1973

EXHIBIT H

677-5919 677-2672

PROOF OF CLAIM FOR DISABILITY BENEFITS
PHYSICIAN'S STATEMENT

1. CLAIMANT'S NAME [illegible] PADILLA (Please Print) Sex: [ ] M [X] F

2. DIAGNOSIS: PREGNANCY

a. Claimant's Symptoms:

b. Objective Findings:

3. SURGERY INDICATED? YES (NO)

a. Type:

b. Date:

4. ENTER DATES FOR THE FOLLOWING:

a. First treatment for this disability 8.4.72

b. Most recent treatment for this disability 1.2673

c. Date claimant was unable to work due to disabilty 2.2.73

d. Approximate date claimant will be able to return to work 9.1.73

5. REMARKS:

PHYSICIAN'S NAME (Please Print) DR. JERE B. FAISON

OFFICE ADDRESS 642 PARK AVENUE
NEW YORK, N.Y. 10021
Number Street

Borough State Zip Code

OFFICE TELEPHONE NUMBER 744-8244

DATE Jan 26 1973 PHYSICIAN'S SIGNATURE Jere B. Faison

NOTICE OF MOTION TO DISMISS COMPLAINT

AND FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH on behalf of themselves and others similarly situated,	:	74 CIV. 304 (W.K.)
Plaintiffs,	:	
-against-	:	NOTICE OF MOTION
THE CITY OF NEW YORK; ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND,	:	
Defendants.	:	

Notice of Motion

TO: Rabinowitz, Boudin & Standard
Attorneys for Plaintiffs
30 East 42nd Street
New York, New York 10017

Mirkin, Barre, Saltzstein & Gordon, P. C.
Attorneys for Defendants,
Social Service Employees Union Local 371
Social Service Employees Union Local 371 Welfare Fund
98 Cutter Mill Road
Great Neck, New York 11021

The Corporation Counsel of the City of New York
Attorney for Defendants,
The City of New York, Abraham Beame, Harry Bronstein, New York City Health and Hospitals Corporation, New York City Off-Track Betting Corporation, Joseph Monserrat, Seymour P. Lachman, Isaiah E. Robinson, Jr., Mary E. Meade
Municipal Building
New York, New York 10007

Edward L. Johnson
Attorney for Defendant,
New York City Housing Authority
250 Broadway
New York, New York

Breed, Abbott & Morgan
Attorneys for Defendants,
Associated Hospital Service, Inc.
United Medical Service, Inc.
1 Chase Manhattan Plaza
New York, New York 10005

Julius Topol
Attorney for Defendants,
District Council 37, American Federation of State, County and Municipal Employees, and
District Council 37 Health & Security Plan
140 Park Place
New York, New York 10007

Notice of Motion

Delson and Gordon
Attorneys for Defendants,
United Federation of Teachers
United Federation of Teachers Welfare Fund
230 Park Avenue
New York, New York

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavit of Bertha Kitover sworn to on the 27th day of June, 1974, and upon the papers and proceedings heretofore had herein, the undersigned will move this Court at Room 1506, United States Courthouse, Foley Square, New York, New York, on the 11th day of July, 1974, at 9:00 o'clock in the forenoon of that day or as soon thereafter as counsel may be heard, for an order pursuant to Rule 56 of the Federal Rules of Civil Procedure dismissing the complaint as against defendant, Group Health Incorporated and directing that summary judgment be entered in favor of said defendant against plaintiffs, upon the grounds that plaintiffs failed to state a claim against defendant Group Health Incorporated upon which relief can be granted, that there is no genuine issue as to any material fact and that defendant Group Health Incorporated is

entitled to judgment as a matter of law, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 26, 1974

Yours, etc.,

TRUBIN SILLCOCKS EDELMAN & KNAPP
Attorneys for Defendant,
Group Health Incorporated
375 Park Avenue
New York, New York 10022

AFFIDAVIT OF BERTHA KITOVER

IN SUPPORT OF MOTION TO DISMISS

COMPLAINT AND FOR SUMMARY JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WOMEN IN CITY GOVERNMENT UNITED, et al,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al,

Defendants.

AFFIDAVIT OF BERTHA KITOVER

----------x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BERTHA KITOVER, being duly sworn, deposes and says:

I am Secretary-Treasurer of Group Health Incorporated ("GHI") and make this affidavit in support of GHI's motion for summary judgment dismissing the complaint herein.

GHI is a New York not-for-profit health service corporation which is organized pursuant to, and governed by, the provisions of Article IX-C of the New York State Insurance Law. It is not an agency of either the State or City Governments.

On October 1, 1973, GHI's Type E Contract providing major medical insurance coverage for the City of New York and for its municipal agencies, became effective. The Type E Contract provides obstetrical coverage in the case of a normal pregnancy for employees of defendants, as set forth in the Contract, in the maximum amount of $125. This provision, like all provisions in the Type E Contract, complies with the New York State Insurance Laws and the rules and regulations of the Insurance Department. The premium paid by the City of New York to GHI reflects the level of coverage set forth in the Contract.

The obstetrical coverage contained in the City of New York Type E Contract, was selected by the City of New York. GHI has in the past offered, and continues to offer, greater obstetrical benefits than those currently provided in the GHI Type E Contract and, of course, seeks to sell the most comprehensive coverage for the risks insured which its customers are willing to accept. GHI is, and has always been ready, willing and able to provide greater obstetrical coverage for the employees of the City of New York and the other defendants herein. If the City of New York accepts such greater coverage and pays the increased rate commensurate with the cost of such

increased benefits, GHI is prepared to immediately provide the coverage.

GHI does not stand in the relationship of employer, employment agency or labor union with the plaintiffs herein. GHI's only relationship with the plaintiffs is derived from the insurance coverage under the GHI Type E Contract with the City of New York. The Equal Employment Opportunity Commission dismissed two of the plaintiffs' claims against GHI because of these facts, holding that Title VII of the Civil Rights Act of 1964 only extends to employers, employment agencies and labor union. Decision of the Equal Employment Opportunity Commission is annexed hereto as Exhibit A.

Bertha Kitover

Sworn to before me this
27th day of June, 1974.

Estelle Gibson

ESTELLE A. GIBSON
Notary Public, State of New York
No. 31-6509150
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT A, ANNEXED TO FOREGOING AFFIDAVIT

Equal Employment Opportunity Commission

Determination of Probable Cause

May 30, 1974

EXHIBIT A

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NEW YORK DISTRICT OFFICE
90 CHURCH STREET, ROOM 1301
NEW YORK, NEW YORK 10007
264-7161

RECEIVED
JUN 12 1974
OFFICE OF THE SECRETARY

CERTIFIED MAIL NO. 683019

Barbara Robertson 1/
97 Tracey Place
Englewood, New Jersey 07631 and

Barbara Bascone 1/
447 East 14th Street
New York, New York 10009 and

Geraldine Leigh 1/
188 6th Avenue
Brooklyn, New York 11217 and

Leslie Boyarsky
777 Foster Avenue
Brooklyn, New York 11230 and

Marlene Kramarow 1/
3427 Lawrence Avenue
Oceanside, New York 11572

vs.

The Board of Education
of the City School District of New York
110 Livingston Street
Brooklyn, New York 11201 and

District Council 37
American Federation of State,
County and Municipal Employees
365 Broadway
New York, New York 10007 and

Charging Parties

RECEIVED
JUN 04 1974
SUB. RELATIONS DEPT.

Charge Nos: TNY 3-0776 (Robertson)
TNY 3-0777 (Robertson)
TNY 3-1174 (Bascone)
TNY 3-1175 (Leigh)
TNY 3-1539 (Boyarsky)
TNY 3-1540 (Boyarsky)
TNY 3-1541 (Boyarsky)
TNY 4-0730 (Kramarow)

Case No: YNY 4-409

1/ Charging Parties Robertson, Bascone, Leigh and Kramarow's sworn charges do not name District Council #37 as a Respondent.

Associated Hospital Service of New York 2/
80 Lexington Avenue
New York, New York 10016 and

United Medical Service 2/
2 Park Avenue
New York, New York 10016 and

Group Health Incorporated 2/
227 West 40th Street
New York, New York

Respondents

DETERMINATION

Under the authority vested in me by 29 CFR 1601.19b(d) (September 27, 1972) I issue, on behalf of the Commission, the following determination as to the merits of the subject charge.

Respondents Board of Education and District Council #37 are, respectively, an employer and a labor organization within the meaning of Title VII and the timeliness, deferral and all other jurisdictional requirements have been met. Substantial weight has been accorded the findings of the New York State Division of Human Rights.

The Charging Parties allege that Respondent Employer's policies and practices regarding employee disability benefits discriminate against female employee Charging Parties because of sex. Charging Parties allege that the Health Plan (hospitalization) provided by Employer for employees through Blue Cross covers the first twenty-one (21) days of hospital confinement in full.

They allege that hospital confinements related to maternity (either normal delivery or abortion) are singled out for separate, discriminatory treatment. Complaining Parties allege that the Blue Cross plan provided by Employer allows a flat $80.00 toward hospital charges for normal delivery or an abortion as opposed to the complete coverage provided for other (non-maternity related) hospital charges.

Charging Parties' allegations are substantiated by materials provided by Respondent Employer. The health plan provided by Respondent Employer which was in effect from July 1, 1972 to October 1, 1973 was the plan covering Complaining Parties when the alleged sex discrimination took place.

2/ Charging Parties Robertson and Boyarsky's sworn charges against the above noted Respondents are dismissed for lack of jurisdiction since, as insurance carriers, they are neither employers, labor organizations or employment agencies within the meaning of Title VII.

The booklet, "A Choice of Health Plans", dated July 1, 1972, provided to this Commission by Respondent Employer states on page 12 that hospital benefits are covered in full for the first 21 days. On page 13 the Booklet states that an allowance of $80.00 is provided toward hospital charges for normal delivery or an abortion. There is no factual dispute presented; the only question is whether or not these facts present a case of sex discrimination.

Title 29, Labor, Chapter XIV, Part 1604, as amended (as of March 31, 1972) sets out Commission policy. Part 1604 covers Guidelines on Discrimination Because of Sex. Section 1604.10(b) states the EEOC rule:

> 1604.10(b) Disabilities caused or contributed to by pregnancy, mischarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

Charging Party Boyarsky alleges that Respondent Labor Organization discriminates on the basis of sex because they allegedly provide disability benefits for members and have allegedly singled out pregnancy-related disabilities to receive no benefits. Respondent Labor Organization, in its answer admits to Charging Parties allegations, but asserts that Respondent Labor Organization cannot provide benefits for pregnancy related disabilities because the cost would be prohibitive. We conclude that the previously cited Guideline, 1604.10(b), applies.

Accordingly, we conclude that there is reasonable cause to believe Charging Parties' charge is true.

Having determined that there is reasonable cause to believe the charge is true, the Commission now invites the parties to join with it in a collective effort toward a just resolution of the matter.

The parties may indicate their willingness to enter into settlement discussion by completing the enclosed invitation and returning it to this office in the self addressed envelope within ten (10) days of the receipt of this letter.

ON BEHALF OF THE COMMISSION:

May 30, 1974
Date

Freddie D. Holt,
Acting District Director

Enclosure: (1)
Notice of Conciliation Process

AFFIDAVIT OF LEO GRUSKIN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN CROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated,

Plaintiffs,

-against-

THE CITY OF NEW YORK: ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY: HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY: NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK: ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND.

Defendants.

AFFIDAVIT

74 Civ 304

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

LEO GRUSKIN, being duly sworn, deposes and says:

1. I am the Director of the Bureau of Health Insurance, Department of Personnel of the City of New York.

Affidavit of Leo Gruskin

2. I make this affidavit to explain to the Court the operation of the program of hospital and medical insurance provided by the City of New York for its employees and retirees.

3. The basic medical and hospital coverage provided to all employees of the City, including the Board of Education ("Board"), is fully paid by the City and the Board and has been since January, 1967. A full description of the plan entitled "A Choice of Health Plans" is attached hereto as Exhibit "A".

4. This fully paid basic health insurance plan is provided to the employees, retirees and their eligible dependents at a cost to the City of approximately $135,000,000, per year at the current rate. Included in this fugure is approximately $70,600,000 in Blue Cross Hospital coverage. To provide full payment for maternity hospitalization would raise the cost of this Blue Cross coverage by approximately 10%.

5. The City's insurance program presently includes approximately 243,000 family Contracts of which 167,000 are headed by male employees.

6. The hospital benefits are the same for all employees although the employees have a choice as to medical coverage.

7. The Associated Hospital Service of Greater New York ("Blue Cross") under contract with the City presently provides the hospital insurance coverage to all City and Board employees.

8. The City's hospital plan contains an $80 maximum coverage limitation in cases of normal maternity delivery.

9. This $80 limitation extends to normal deliveries only, and where complications develop, i.e. caesarean section delivery, ectopic pregnancy, spontaneous termination of pregnancy during the first six months, full and complete hospitalization benefits are provided pursuant to the contract with Blue Cross.

10. Normal maternity delivery coverage is not the only limitation or exception in the Blue Cross coverage. Benefit limitations are also provided for polio, communicable diseases, pulmonary tuberculosis, mental disorders, outpatient emergency services, cosmetic surgery, and removal of the tonsils or adenoids.

11. The fully paid medical coverage provided for every City employee allows for a choice of one of three plans. Two of these plans are offered through Group Health Insurance Inc., GHI and GHI Type E (the successor since October 1, 1973 of the major medical insurance formerly provided by United Medical Service - Blue Shield).

The third choice is provided by the Health Insurance Plan Inc. (HIP).

12. GHI provides a scheduled allowance for maternity and all illnesses. Full maternity coverage is provided if a participating family physician is used.

GHI Type E provides a set cash allowance plus a major medical feature which includes as covered medical expenses those expenses not fully covered in the basic

program, except for normal delivery and non-surgical miscarriage. Additionally, immunizations, annual physical checkups and related diagnostic studies, and well-baby care are not covered.

HIP provides full coverage for all maternity costs without any fee to the employee or his dependant whatsoever. The employee needn't even file a form for this coverage and he incurs no out-of-pocket expenses.

13. All of the insurance coverage provided in the City Plans must, by law, be approved by the New York State Superintendent of Insurance. New York Insurance Law §154, 141.

14. The medical and hospital coverage provided to City employees is determined through negotiations between the City Administration and representatives of the municipal labor organizations.

15. During these negotiations there is medical and technical advisory input, including advice from the City's health administrators as to the Health Insurance benefits that can be purchased in view of the financial limitations. Unless there are infinite resources available an insurance plan must have some limitations if it is to be financially viable.

16. There have been changes in the health plan due to the costs involved. For example, in 1970 coverage under the major medical plan for psychiatric care had to be eliminated and the drug benefits provided were made an

optional benefit, payable through employee payroll deductions, both due to the cost factor. Additionally, under GHI, effective September 1, 1971 the following were made optional benefits, payable through payroll deductions. These were a) Nursing, Ambulance and Appliance benefits, and b) Out-of-Hospital Specialist Consultations. Other benefits under GHI were dropped completely, these are Out-of-Hospital Psychiatric care and Diagnostic screening tests.

17. City employees may, if they desire, purchase certain optional benefits, which are added to the basic policy, for a nominal cost. The hospital optional benefits rider increases the Blue Cross coverage to 120 full benefit days (from 21 days) and pays 50% of covered hospital expenses for an additional 180 days. This optional benefits rider has no effect on the normal maternity coverage.

18. The City, as a result of collective bargaining, pays $300 per annum to union welfare funds for employees in titles covered by union Contracts. The unions administer the funds and offer benefits which may include family dental treatment, family prescription drug benefits, family optical expenses, etc. The Faculty Conference of the City University of New York, for example, has elected to provide for the titles it covers full maternity benefits. The Police Benevolent Association provides an additional $70 maternity benefit. These union welfare fund contributions cost the City an amount in excess of $100,000,000 annually.

Affidavit of Leo Gruskin

19. There is at present a study being made for the City by the Cornell Medical School, School of Public Health concerning the City's health program, its costs, benefits and possible improvement. This study has an expected completion date of October 31, 1974.

20. Adding full maternity coverage to the City's policy would cost the City millions of dollars. In view of the City's continuing budgetary crisis, any such additional cost to extend the benefits of just part of one of the covered risks would heavily burden the resources available and might necessitate in the reducing or eliminating of other risks now covered.

Leo Gruskin

LEO GRUSKIN

Sworn to before me this

10th day of July, 1974

DAVID W. FISHER
Notary Public, State of New York
No. 31-0230010 Qualified in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 1975

Insurance Carriers

Blue Cross and Blue Shield of Greater New York
622 Third Ave.
New York, N. Y. 10017
Questions about a claim: ask for Hospital Information
Other Questions: ask for City Information
Phone: 490-4141

Group Health Incorporated (GHI) &
Major Medical (GHI Type E)
227 West 40 Street
New York, N. Y. 10018
Attention: Government Unit
Phone: 736-7979

Health Insurance Plan of Greater New York (H.I.P.)
625 Madison Avenue
New York, N. Y. 10022
Attention: Subscriber Service
Phone: 754-1144

(Telephone area code for New York City is 212)

Administered by

Department of Personnel
Health Insurance Section
220 Church Street
New York, N. Y. 10013
Phone: 566-8972

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

Dear City Employee:

In view of th ever-increasing cost of medical care throughout the nation, I am particularly proud that the City provides our employees, retirees and their dependents with a comprehensive health insurance program. The program, which is described in this booklet, offers you a choice of one of three medical insurance plans each of which includes the same Blue Cross hospitalization insurance.

The City pays the full cost of whichever basic plan you choose for you and your family. You may, if you wish, obtain additional benefits by enrolling for an optional benefits rider. The cost of optional benefits would be deducted from your paycheck.

It is most important for you to select the one plan that best meets the needs of you and your family. This booklet provides detailed information about each of the plans. Please read it carefully before you select your health insurance coverage.

This booklet not only provides a complete description of the benefits, but it also contains important details concerning enrollment, eligibility and other general information of which you should be aware. I suggest, therefore, that you keep this booklet for future reference.

I wish you and your family years of good health.

Sincerely,

Abraham D. Beame

Abraham D. Beame
Mayor

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GENERAL INFORMATION ABOUT THE NEW YORK CITY HEALTH INSURANCE PROGRAM



Blue Cross
of Greater New York

AND

GHI
(MAJOR MEDICAL TYPE E)

OR

HIP
HEALTH INSURANCE PLAN

OR

GHI
GROUP HEALTH INCORPORATED

A CHOICE OF HEALTH PLANS

for New York City Employees and Retirees Under Age 65

The City of New York offers you a choice of one of three Health Plans. Each Plan has two parts – a hospitalization part and a medical care part. The hospitalization part, provided by Blue Cross of Greater New York, *is the same for each Plan.* For medical care, you may choose one of the following:

Major Medical (GHI Type E)* *or*
Health Insurance Plan (H.I.P.) *or*
Group Health Incorporated (GHI)

Who pays for your Health Insurance?

The City pays the full cost of whichever plan you choose (see above) for yourself and your eligible dependents. You may, however, add to your coverage by purchasing an Optional Benefits Rider. If you do, you will pay the additional cost of this option through payroll or pension deduction. Optional Benefits Riders differ in cost and benefits under each plan.

Who May Enroll

You may enroll in the program if:

(a) You work—on a regular schedule—for at least 20 hours per week
(b) Your appointment is expected to last for more than 6 months

How to Enroll

Obtain the necessary Authorization forms *promptly* from your Payroll or Personnel Officer.

Return the completed form *promptly*. If you do not, the start of your coverage will be delayed and you may be subject to loss of benefits.

Waiver of Health Insurance Benefits

If you are already enrolled for City health insurance in any other capacity, such as a dependent, or if you do not want City health insurance, you must complete a "Waiver of New York City Health Insurance Benefits" form (DP-1059). Employees and retirees who have comparable insurance from another source also should complete the Waiver form. EVERY ELIGIBLE EMPLOYEE OR RETIREE MUST COMPLETE EITHER AN AUTHORIZATION FORM FOR HEALTH INSURANCE OR A WAIVER FORM.

*Note: GHI offers two separate and unrelated benefit plans. One is referred to as Group Health Incorporated (GHI) and the other, previously provided by Blue Shield, is referred to as Major Medical (GHI Type E).

Double City Coverage Is Not Permitted

If you are eligible for coverage as (1) an employee or retiree *and* as (2) a dependent (of another City employee or retiree), you may enroll as (1) *or* (2), *but not both*. Eligible dependent children must all be enrolled as dependents of one parent.

Dependents Eligible for Enrollment

- Husband or wife.
- Unmarried children under age 19. The term "children" includes any legally adopted child, any stepchild who resides in your household, and any child supported by you or your spouse who permanently resides in your household.
- Unmarried dependent children—ages 19 to 23—who are full-time students (applies to both Group Health Incorporated Plans, under an appropriate contract; this does not apply to Blue Cross coverage, Major Medical *hospital* benefits, or to H.I.P. benefits).
- Unmarried children age 19 and over who cannot support themselves because they are mentally retarded or physically handicapped are eligible for coverage—if disability occurred before 19th birthday.
- Retirees may not cover dependents acquired after April 1, 1966 or after their retirement date, whichever is later.

When Coverage Begins for Active Employees

A. For Provisional and Temporary employees and those Non-Competitive employees for whom there is no experience or education requirement:

On the first day of the pay period following the completion of 90 days of continuous employment, provided that your Authorization form has been submitted within that period.

B. For All Other Employees:

1. If you enroll in either GHI Plan, your coverage (including Blue Cross) begins on your appointment date, provided that your Authorization form has been received by your agency personnel or payroll office within 31 days of that date.
2. If you enroll in H.I.P. your coverage (including Blue Cross) begins on your appointment date provided that your appoint-

ment date is the start of a pay period and that your Authorization form is received by your agency personnel or payroll office on your first day at work. Otherwise, your coverage begins at the start of the pay period following submission of your Authorization, if received by your agency personnel or payroll office within 31 days of your appointment date.

C. For Eligible Dependents:

Coverage for eligible dependents listed on your Authorization form will begin on the day that you become insured.

Dependents acquired after you submit your Authorization form – as a result of marriage, birth or adoption of a child–will be covered from the date of marriage, birth or adoption, provided that you submit the required notification within 31 days of the event (See Changes in Dependent Status below).

D. Changes in Dependent Status:

1. Marriage

   If you want coverage for your spouse you must submit a new Authorization form, within 31 days of your marriage, to your agency personnel office. Otherwise, waiting periods and medical evidence of insurability may apply.

2. Birth or Adoption of a Child

   In order to cover your first child from birth or adoption, you must change to a Parent and Child or Family contract by submitting a new Authorization form to your agency personnel office within 31 days of the child's birth or adoption. If you are already on a family contract a new Authorization form should be filed within 31 days to add the child's name to your contract.

3. Death of a Spouse

   Active employees must submit a new Authorization form to their agency personnel office to make the necessary changes within 31 days.

4. Divorce or Legal Separation

   Same procedure as given in paragraph 3 above.

5. Child reaching age 19 or age 23

   Under a Family contract, Blue Cross and H.I.P. cover unmarried dependent children *until their 19th birthday*. You may

continue coverage on a Direct Payment basis by applying in writing to Blue Cross and H.I.P. *within 31 days of child's 19th birthday.*

Both GHI Plans cover unmarried dependent children who are full-time students to age 23.* (If they are not in this category, coverage stops at 19.) You may continue coverage on a Direct Payment basis by applying in writing to your medical carrier within 31 days of child's 23rd birthday.

E. Late Applications:

If you submit an Authorization form more than 31 days after your appointment date, or more than 31 days after your marriage, or the birth or adoption of a child:

1. Coverage will not start until after your Authorization form is accepted by the insurance carrier.
2. You may be required to submit evidence of insurability.
3. Waiting periods may be imposed for benefits for maternity, removal of tonsils and adenoids and for pre-existing conditions.

When Coverage Begins for Retirees

A. Coverage After Retirement

You may continue your coverage when you retire if you have had five years of credited service as a member of a pension system. (This requirement does not apply if you retire because of accident disability.)

and

have been employed by the City (or city-related agency) or the Board of Education immediately prior to retirement, and have worked regularly for at least 20 hours per week.

and

receive a pension from a retirement system maintained by the City.†

and

apply to your agency payroll or personnel officer.

* This does not pertain to the Blue Cross portion of the coverage which stops on the 19th birthday. It can be continued on a Direct Payment basis by applying to Blue Cross of Greater New York within 31 days.

† If you are not receiving a pension check because you have deferred your pension, you may be eligible for City paid health insurance coverage until you receive your pension check, for a period not to exceed five years. To be eligible, you must be retiring under N.Y.C. Retirement System Plan "A" and have 20 years of service. Contact your personnel office for details.

B. Change in Dependents of Retirees

Retirees must file an Authorization form at the City Health Insurance Section within 31 days to report any change due to: death, divorce, legal separation, children reaching ineligible age* and other circumstances.

C. Change of Health Insurance Plans

Retiring employees are *not* permitted to change their plans at retirement or after (except for H.I.P. subscribers who permanently move out of the H.I.P. area). However, at retirement you may add to your basic coverage the Optional Benefits Rider provided by your Plan. Those planning to retire should consider any changes during their last regular transfer period as an active employee.

When Coverage Terminates

1. *For an employee or retiree and his dependents* when the employee or retiree stops receiving a pay check or pension check.

   Note: Employees on maternity leave without pay, authorized leave without pay as a result of temporary disability or illness, military leave or receiving Workmen's Compensation may have their City Health Insurance continued for certain specified periods of time. Contact your payroll or personnel office for details.

2. *For a spouse* when divorced or legally separated from an employee or retiree. (See page 6 for instructions.)

3. *For a child,* upon marriage or reaching the age of 19, except for unmarried, dependent, full-time students covered by either GHI Plan, who remain covered to age 23 (see page 5 for special provision for disabled children and page 6 for instructions).

The Medical Carrier's waiver of waiting periods terminates when you leave the City group.

If your coverage terminates for any reason, you may convert to Direct Payment Contracts by applying to the carriers. One policy will be offered by Blue Cross and a separate policy will be offered by your present medical carrier. The benefits available on Direct Payment are:

1. Blue Cross – basic (21 day) coverage, no Optional Benefits Rider.

2. Major Medical (GHI Type E) – no Major Medical coverage. Same as shown in #3 below except that maternity allowance is $125 if subscriber was insured for 10 months under this group.

* See Dependents Eligible for Enrollment, page 5.

3. GHI – basic coverage, Direct Payment Semi-Private Plan limited to in-hospital medical care, surgery, anesthesia, in-hospital consultations, diagnostic X-rays and laboratory examinations, in-hospital psychiatric care, shock therapy, visiting nurse service and ambulance service. Maternity allowance–$75, no Optional Benefits Rider.
4. H.I.P. – basic coverage, no Optional Benefits Rider.

Identification Cards

When you first enroll under this program, or when you transfer from one plan to another, your carriers will issue identification cards.

New identification cards are also issued whenever there is a change in class (e.g. from Individual to Husband and Wife, or from Husband and Wife to Family). If you do not receive a new identification card from your MEDICAL CARRIER within two months after submitting an Authorization form, you must notify your agency personnel office if you are an active employee, or write to your MEDICAL CARRIER if you are a retired employee.

Deductions For The Optional Benefits Rider

If you apply for an Optional Benefits Rider under the City's program, your paycheck should show a deduction for this cost. If your check does not reflect the deduction within two months after submitting a new Authorization form, you must notify your personnel office. However, your check will not show a deduction if your employee organization is providing these benefits for you.

It may take some time before deductions start from retirees' pension checks. A larger retroactive deduction is then made to pay for the period from retirement to the time of the first deduction.

When and How to Transfer to Another Health Plan

You may change your plan only during transfer periods. Adequate advance notice will be given before a transfer period is established. Transfer periods for active employees are usually held once a year in the fall. *There are no transfer periods for retirees.* To change your insurance plan during the transfer period, you must submit a new Authorization form at your payroll office. Once you exercise your right to transfer by submitting an application during the transfer period, the transfer period is ended for you.

If you do not apply for an Optional Benefits Rider when you first enroll, you may obtain these additional benefits only during a transfer period or upon retirement.

However, if you enroll in H.I.P. and permanently move *outside* of H.I.P.'s service area, you may transfer within 31 days to another plan without waiting for the next transfer period. Also, if you move *inside* the H.I.P. area, you may transfer within 31 days to that plan.*

Persons moving permanently out of the H.I.P. area of service but desiring to continue H.I.P. coverage, excluding home visits, may retain H.I.P.-Blue Cross coverage by communicating in writing with H.I.P. and signing the appropriate H.I.P. agreement. By signing this agreement, the person waives the right to change his plan until the next transfer period or until he moves again.

What to do if You Have a Health Insurance Question or Problem

If you have any questions relating to benefits, services, or claims, you should write or call the health insurance carrier involved at the address given on the inside front cover of this booklet.

If your problem or question relates to paycheck deductions, see your agency payroll officer if you are an active employee. If you need additional assistance (or if you are a retiree), write, or in an emergency, call:

N.Y.C. Department of Personnel
Health Insurance Section
220 Church Street
New York, N. Y. 10013
Phone: 566-8972

When writing to a carrier, give your Social Security number, certificate number, group number, name and address. When writing to the Health Insurance Section, give the plan in which you are enrolled (i.e., either GHI Plan or H.I.P.), your certificate number, your Social Security number, your health insurance code, name and address.

Retirees must also include their pension number and Retirement System when writing to the carriers or the Health Insurance Section.

Upon Reaching Age 65 or Becoming Eligible for Medicare

If you or your spouse are approaching age 65†, please keep in mind that you must enroll in both Part A (Hospital Insurance) and Part B (Medical Insurance) of Medicare to prevent loss of benefits. *This is necessary because the City's program supplements Medicare but does not duplicate benefits provided by Medicare.*

Enroll through your local Social Security office during the three month period **before** the month of your 65th birthday to assure continuity of benefits upon attaining your 65th birthday.

* Only one change back into H.I.P. will be permitted as a result of a move back into the H.I.P. service area.

† This also applies to those eligible for Medicare under special provisions of the Social Security Act such as benefits for the disabled.

If You, or Your Spouse, are INELIGIBLE* for Medicare, Part A or Parts A and B, Although Over Age 65 –

Apply to:

N.Y.C. Department of Personnel
Health Insurance Section
220 Church Street
New York, N. Y. 10013

for a standard policy. You will then continue to receive under 65 hospital and/or medical benefits even though you are over 65. Please give full identifying information, including name, date of birth, address, agency where employed or from which retired, pension number (if any), plan of insurance and certificate numbers, health code, Social Security number, and Medicare numbe (if any). Also give the reason for ineligibility for Medicare, Part A or s A and B.

The Employee Blood Program

Blue Cross covers the cost of administering transfusions and pays blood processing fees for employees and their families enrolled through participating agencies of the Greater New York Blood Program. Blue Cross does not pay for the blood itself, nor is this item covered by any other health insurance plan offered by the City.

The New York City Employee Blood Program does replace blood required by its members and also pays for hospital handling charges not covered by other insurance. If you are employed by a participating agency you may obtain this protection for yourself and your family by enrolling in the Employee Blood Program. For further information, see your agency Blood Coordinator, or call 566-2800.

* Reasons for ineligibility would include non-citizenship or residence outside of the country for Parts A & B or non-eligibility for Social Security benefits for Part A.

Please note that if you fail to enroll for Part B during the enrollment period, you will not be eligible for the standard contract.

BLUE CROSS® HOSPITAL

Provided by Blue Cross of Greater New York

First 21 days Covered-in-Full **PLUS** **Next 180 days at 50% discount**

In Semi-Private Accommodations
Regardless of the Hospital's Regular Charges
(in each hospital confinement*)

HOSPITAL

Member hospitals† provide the following services‡ on a covered-in-full basis for semi-private care:

- Bed and board including special diets.
- General nursing care.
- Use of operating and cystoscopic rooms and equipment.
- Use of recovery room and equipment.
- Laboratory examinations.
- X-ray examinations.
- All drugs and medicines for use in the hospital (not including radium and radioactive substances) which are commercially available for purchase and readily obtainable by the hospital.
- Use of blood transfusion equipment (not including blood or blood plasma); administration of blood only when given by a hospital employee.

* HOSPITAL CONFINEMENT: Two or more hospital stays not separated by 90 days are considered one confinement. However, hospital stays for pregnancy or accidental injury shall not be considered part of the same hospital confinement as hospital stays for other causes.

† If the hospital is a Member Hospital of any Blue Cross Plan, you receive the same benefits as in a Member Hospital of Blue Cross of Greater New York.

‡ Services must be consistent with the diagnosis and treatment of the condition for which hospitalization is required.

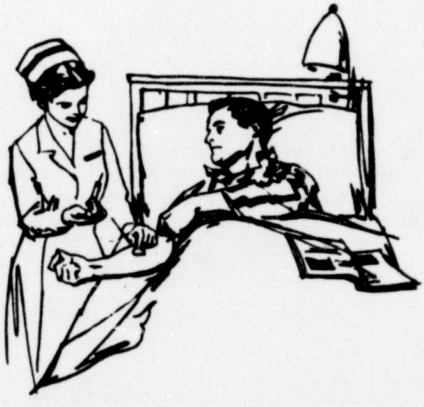
BENEFITS...FOR ALL PLANS

in Any Blue Cross Member Hospital

The *Optional Benefits Rider* increases your BLUE CROSS coverage to 120 FULL-benefit days (from 21 days) and pays 50% of covered hospital expenses for an additional 180 days.

BENEFITS

- Oxygen and use of equipment for its administration.
- Anesthesia supplies and use of anesthesia equipment.
- Dressings and plaster casts.
- Basal metabolic examinations.
- Use of cardiographic equipment.
- Use of physiotherapeutic equipment.



Private Room Benefits

When you use private room accommodations, Blue Cross pays an allowance equal to the hospital's average regular semi-private charge for bed, board and general nursing service for 21 days; 50% of this allowance is provided during the additional 180 day discount period. You are responsible for the difference between what Blue Cross allows and the hospital's charges. In addition, you receive all the other covered hospital services for full-benefit and discount days.

Maternity Benefits

- An allowance of $80 is provided toward hospital charges for normal delivery or an abortion, either in the in-patient or out-patient department of an accredited hospital.
- For conditions arising out of and during pregnancy, an allowance of $10.00 per day is provided for up to 8 days of care rendered prior to hospitalization during which pregnancy is terminated.
- For Cesarean Section, spontaneous termination of pregnancy during the first six months, for termination of an ectopic pregnancy and for certain other surgical terminations, regular Hospital Benefits are provided from the date of termination, less the days of care previously provided, if any.

Newborn Children of Active Employees

Under a Parent and Child or Family Contract, hospital service benefits for children begin at birth for treatment of illness or injury. Hospital service benefits for nursery care, except routine nursery care, will also be provided for 21 full-benefit and 180 discount days, for:

a. Premature infant weighing less than 4.4 pounds when care is rendered in an approved Premature Nursery.

b. All infants weighing between 4.4 and 5.5 pounds—from the time the mother leaves the hospital.

c. Premature infants in an approved Premature Nursery who need incubator care, whether or not they are within the above weight classifications.

Benefits are provided for a circumcision only if performed after a child becomes 90 days of age.

Communicable Diseases

A. *Polio*—Benefits are limited to 30 days during the first 60 days from the onset of poliomyelitis.

B. *Other communicable diseases*—Hospital service benefits are provided for 21 full-benefit and 180 discount days for subscribers over age 16 at the time of admission for measles, German measles, chicken-pox, diphtheria, mumps, scarlet fever, or whooping cough.

Pulmonary Tuberculosis

Hospital service benefits are provided for post-operative care, from the day of surgery, for up to 21 days in any 12-month period. These benefits are available in a non-governmental hospital which is either an accredited or Member Hospital.

Mental or Nervous Disorders

Benefits are limited to 30 days in any 12-month period. These benefits are available in any non-governmental general hospital which is either an accredited or Member Hospital. However, benefits will not be provided for care in a separate division of a general hospital where that separate division contains more than 15% of the total beds in that hospital or where the average length of stay in that separate division is more than 60 days.

Out-Patient Service . . . When You Need First Aid

Up to $7.25 is provided *toward the hospital's charge* when you are not a registered bed patient for —

- emergency first aid within 24 hours after accidental injury (does *not* include coverage for emergency first aid due to illness), or
- the use of a hospital's operating room facilities for surgery.

Removal of Tonsils and Adenoids

Hospital service benefits are provided for . . . one (1) day for patients under 12 years of age, and two (2) days for older patients.

Protection Away From Home

Blue Cross protection is available wherever you travel. The extent of benefits you receive depends on the type of hospital you enter.

If the hospital is a Member Hospital of any Blue Cross Plan, you receive the same benefits as in a Member Hospital of Blue Cross of Greater New York.

If the hospital is not a Member Hospital of any Blue Cross Plan, during the full benefit period you receive $15.00 a day toward but not exceeding the hospital's charge for room, board and general nursing care, plus 80% of the hospital's charges for the other services to which you would be entitled in a Member Hospital. During the discount period the benefit is $7.50 a day for room and board, plus 40% of the hospital's regular charges for other services.

The above benefits and allowances do not apply to those services for which your contract provides specific payments.

Home Care

Home Care benefits are available if your doctor says there is a continued need for professional nursing or physical therapy and continued hospitalization would have been required had Home Care not been available. Home Care must begin within 7 days of discharge. Benefits include up to 50 visits per calendar year for: part-time professional nursing, physical therapy or speech therapy; services of a medical social service worker, medical supplies, drugs, medications, lab, X-ray, EKG services; ambulance if medically necessary.

These benefits are available only through a New York State certified Home Health Agency which has entered into an agreement with Blue Cross of Greater New York for the provision of these services.

Benefits in Non-Member Hospitals Within the Operating Area of Blue Cross of Greater New York

Cash benefits are provided only for regularly covered services performed as *emergency* care.

Conditions and Services Not Covered

Confinement in a non-Member Hospital within the operating area of Blue Cross of Greater New York, except emergency care for illness or injury; Workmen's Compensation cases; hospitalization furnished under Federal, State or other laws, or in a veterans' facility or a hospital operated by the United States government; confinement for sanitarium-type, custodial, or convalescent care, or for rest cures; or for care in a hospital for long term care; X-ray therapy; services of physicians or private or special nurses, or ambulance services.

Hospital confinements or any period of hospital confinement primarily for diagnostic studies, physiotherapy or rehabilitation.



Blue Cross

of Greater New York

AND

GHI

BASIC AND
MAJOR MEDICAL (TYPE E)

When You Or Your Family Need Hospital Care . . .

MAJOR MEDICAL (GHI TYPE E) EXTENDS AND BROADENS YOUR HOSPITALIZATION COVERAGE

If Blue Cross benefits are

- at 50% (after 21 days), or
- otherwise limited, or
- excluded because of the nature of the hospital*, or
- used up

Major Medical (GHI Type E) picks up as a Covered Medical Expense all hospital services ordinarily covered by Blue Cross (except normal delivery or non-surgical miscarriage).

Major Medical (GHI Type E) also covers hospital expenses for admission for diagnostic studies, physical therapy and rehabilitation.

* Blue Cross, within its New York City operating area, does not provide any regularly covered services while in a non-member hospital except for emergency care. Major Medical (GHI Type E) provides those services not covered by Blue Cross (except for routine maternity care).

BASIC (GHI TYPE E) MEDICAL AND SURGICAL PROGRAM

(Hereinafter referred to as Basic Program)

All subscribers receive cash allowances for these services based on an indemnity schedule:

- surgery
- obstetric delivery
- surgical maternity care
- administering general anesthesia
- assistant surgeon
- in-hospital medical care including:
  - psychiatric care
  - care of pulmonary TB
  - premature infants
- radiation therapy
- emergency first aid
- diagnostic x-ray, less the first $20 of the scheduled allowance (This $20 is a covered expense under Major Medical.)
- in-hospital consultations
- electro-shock therapy

When You or Your Family Need Doctor Care . . .

MAJOR MEDICAL (GHI TYPE E) EXTENDS AND BROADENS YOUR DOCTOR CARE COVERAGE

If cash allowances under the Basic Program do not cover expenses in full, the balance is picked up by Major Medical (GHI Type E), except for normal delivery of a child and non-surgical miscarriage, as a Covered Medical Expense, to the extent that such expense is *reasonable, necessary* and *customary.*

> Payment determination will be made strictly on the basis of the doctor's charge, his fee profile, or the prevailing screen as established by GHI, whichever is the least. Prevailing is that level of reimbursement which provides payment in full for no less than 90 percent of the physicians and 90 percent of the services reported by these physicians in the GHI operating area.

Major Medical also includes as Covered Medical Expenses these additional out-of-hospital doctor's services:

- Doctor visits at home
- Doctor visits in office
- Specialist visits at home or office

NOTE: Preventive care (immunizations, annual physical checkups and related diagnostic studies, and well-baby care) is *not covered.*

When You Have Other Medical Expenses In Or Out of the Hospital . . .

MAJOR MEDICAL (GHI TYPE E)

Also Covers:

Private duty nursing care (excluding first 72 hours)*

Allergy treatment (including serum)

Visiting nurse service

Physical therapy (per doctor's instructions)

Rental of certain types of durable equipment such as iron lung

Prosthetic devices, other than dental, which replace body parts

Leg, arm, back or neck braces

Radiation therapy supplementing the Basic Program

Diagnostic x-ray procedures supplementing the Basic Program

Local professional ambulance service

Laboratory expenses

Administration of blood or blood plasma and cross-matching of blood (but not the cost of the blood or plasma)

Oxygen and its administration

Dental care – Repair of injury to natural teeth sustained through external and accidental means and limited to treatment received within one year from the date of the accident

Cutting surgery on tissues of the mouth, other than the gums, when not performed in connection with the extraction or repair of teeth

Excision of impacted teeth, bony cysts of the jaw, torus palatinus, leukoplakia, or malignant tissue

* Under Extended and Expanded Optional Benefits Riders, coverage *includes* first 72 hours of private duty nursing care.

Treatment of feet – Services of a physician or podiatrist for treatment of diseases, injuries and malformations of the foot including partial or complete removal of nail roots.

If prescribed by a doctor of medicine (M.D.) treating the individual for a disease, such as diabetes or arteriosclerosis, the following are covered:

cutting, removal or other treatment of corns, calluses or toenails.

However, for the following conditions, *only* treatment by open cutting operation is covered:

weak, strained or flat foot
instability or imbalance of the foot
metatarsalgia or bunion

Psychiatric services *only when* confined in a general hospital

MAJOR MEDICAL (GHI TYPE E)

How Does It Work?

- After the Basic Benefits have been determined and after a person has incurred an additional $50 of covered expenses in a calendar year, then Major Medical pays 80% of covered expenses to the extent that they are *reasonable, necessary, and customary.*
- The employee and each covered dependent are considered individually as to deductible.
- For a family of four or more – once the covered expenses for the family add up to $150 during the calendar year (maximum of $50 on any one person) – Major Medical pays 80% of the excess. Thus, there can never be more than a total of $150 of initial out-of-pocket expenses for one year's deductible regardless of family size.
- In the event of an accident involving two or more people in the same family, only one $50 annual deductible is applied to those expenses.
- Any expenses incurred during the last three months of the year which are applied to meet the deductible will also apply toward the following year's deductible.
- Any part of the deductible paid out-of-pocket under the Blue Shield contract – from October 1, 1972 through September 30, 1973 – will count toward satisfying the Major Medical (GHI Type E) deductible during 1973.
- Major Medical pays up to a maximum of $10,000 in one year and $20,000 in a lifetime (per person).
- Benefits received under the former New York City Blue Shield and Metropolitan Life Major Medical Plans are considered part of the maximum benefits.
- The employee and each covered dependent are considered individually as to maximum.

Reinstatement of Lifetime Maximum

- Whenever an individual has received benefits of $1,000 or more and can submit evidence of recovery of good health satisfactory to GHI, his $20,000 lifetime maximum will be reinstated.

OPTIONAL BENEFITS* UNDER BLUE CROSS-MAJOR MEDICAL (GHI TYPE E)

(through payroll deduction)

EXTENDED Benefits Option

(Restricted to City employees who held this option prior to July 1, 1970, or employees whose Welfare Fund coverage provides Drug Benefits)

- This option extends your Blue Cross hospitalization coverage from 21 days to 120 days and pays 50% of covered hospital expenses for an additional 180 days. Private Duty Nursing is also extended to include the first 72 hours (normally excluded under Major Medical).

EXPANDED Benefits Option

This option expands your benefits in the following ways:

- It increases your Blue Cross hospitalization coverage from 21 to 120 days and pays 50% of covered hospital expenses for an additional 180 days. Private Duty Nursing is also increased to include the first 72 hours (normally excluded under Major Medical).
- This option also provides coverage for Prescription Drugs and Medicines after the Major Medical deductible is met (see page 23). Covered drug and medical costs may be used to satisfy this deductible. Major Medical will then pay 80% of all drugs and medicines prescribed in writing by a doctor and dispensed by a licensed pharmacy for out-of-hospital use.

DRUG RIDER

Those employees who have the 120-day hospitalization benefit paid for by their Welfare Fund may choose to purchase only the Prescription Drug benefits described immediately above.

* If you select an optional benefits rider that you are not eligible for, GHI may enroll you under the rider for which you are eligible.

HOW TO OBTAIN BENEFITS

1. Complete a GHI Claim Form #679 with your doctor. (Most doctors have their own personal supply of these forms.)
2. You fill out the top portion: Subscriber's name, full address, certificate number, group number, patient's name and birthdate, then
3. Have your doctor fill out and sign his portion of the Claim Form. You then sign your portion.
4. After the form is completed, make sure your doctor gives you the GHI Claim Form. Mail it promptly to

   Group Health Incorporated
   P.O. Box 694, Midtown Station
   New York, N.Y. 10018
5. GHI will process the claim form and determine benefits available under both your Basic Program and Major Medical coverage.
6. GHI will issue to you one check covering the allowance available under both your Basic Program and Major Medical coverage.
7. If services rendered by other than physicians (druggists – if you are covered for drug benefits – nurses, ambulances, etc.) are involved:
   a. Complete the subscriber (upper) portion of the form.
   b. Attach original itemized bills. All prescription drugs must indicate first and last name of patient, prescription number and doctor's name.
   c. Your doctor's authorization must be submitted with claims for durable medical equipment.
   d. Nurses' bills must show the date, place and hour of duty, charge per day, and the nurse's signature, and license or registration number. These bills should be submitted with a statement from the doctor who prescribed the service.

   Photocopies of bills are not acceptable.

   Note: Claims for other than physician services can also be filed by using GHI Claim Form #678.

Benefits . . . Anywhere in the World

You are eligible for all covered services rendered anywhere in the world.

Waiting Period

Major Medical benefits will not become payable for anyone who, on the effective date of his coverage, is confined in a hospital (or other institution) or at home under the care of a physician or surgeon because of a disabling sickness or injury until that person is no longer so confined. This restriction does not apply to a person transferring from another City-sponsored health plan during a Transfer Period.

Non-Duplication of Benefits

The Major Medical Group Policy Type E, provided by Group Health Incorporated, contains a Coordination of Benefits provision. If an insured person is entitled to any medical, dental care, or major medical benefits or service from another source (excluding an individual insurance policy), benefits under this policy may be reduced. This reduction in benefit permits an insured person to receive from his benefit plans no more than 100% of any necessary, reasonable and customary item of expense covered under the plans. Benefits are reduced only to the extent necessary to prevent an individual from making a profit from his insurance coverage.

Principal Exclusions

Workmen's Compensation cases; care under Federal laws; hospital charges of rest homes, homes for the aged, places for drug addiction, alcoholism, etc.; cosmetic surgery, routine care of the newborn; out-of-hospital psychiatric care; eye glasses, contact lenses, hearing aids and examinations therefor; rest cures; routine check-ups; care of the teeth; certain types of care of the feet; expenses for which there are no legal obligations to pay.

Benefits After Termination of Coverage

Basic Benefits: If coverage terminates for any reason, benefits for the following are provided as though termination had not occurred:

1) In-Hospital Medical Care when hospitalized on the date of termination or admitted to the hospital for services within 31 days after termination for a condition which existed on the date of termination, until the patient leaves the hospital.

2) Surgery performed within 31 days after termination provided the condition requiring the surgery existed on the date of termination.

3) Certain complications of pregnancy until termination of the pregnancy.

Major Medical Benefits: If an employee or dependent is totally disabled as a result of illness or injury at the date of termination of coverage, benefits are payable for Covered Medical Expenses incurred during the continuance of such total disability and on account of such illness or injury for a period of eighteen months after termination of coverage.

EXAMPLES OF BASIC PROGRAM CASH ALLOWANCES

Most doctor expenses not covered in full by the Basic Program are Covered Medical Expenses under Major Medical.

SURGERY AND ANESTHESIA

	Allowances	
	Surgery	*Anesthesia*
Appendectomy (I.P.)	$200	$ 40
Large bowel resection	450	90
Radical mastectomy, unilateral	325	65
Lobectomy (total or subtotal)	550	110
Dislocation, shoulder, open reduction	225	45
Mastoidectomy, radical, unilateral	300	60
Tonsillectomy and adenoidectomy, Subscribers under age 12	80	25
Subscribers age 12 and over	85	25
Fracture, bones of forearm, both shafts	125	25
Fracture, lower leg, both shafts (tibia, fibula, simple or compound open reduction)	275	55
Dilation and curettage (I.P.), (non-puerperal)	90	25
Panhysterectomy, total hysterectomy (corpus and cervix)	325	65
Hernioplasty: Herniorrhaphy: Herniotomy: Inguinal, unilateral	175	35
Hemorrhoidectomy, internal and external (in-hospital)	135	27

(I.P.) Independent Procedures — Basic Program will pay only the highest allowance when I.P. procedures are performed with other procedures in the same operative field.

ADMINISTRATION OF GENERAL ANESTHESIA

Benefits amounting to 20% of the allowance for surgical or maternity care are provided for the administration of general anesthesia by a physician other than the operating surgeon or his assistant. The minimum allowance is $25.

ASSISTANT SURGEON SERVICES

When a surgical procedure is performed in a hospital in which there is no house staff, and when it is necessary for a physician engaged in the private practice of medicine, and not an employee of the hospital, to assist the operating surgeon, benefits are provided for such assistant surgeon as follows:

Surgical Benefits	*Assistance at Surgery Benefits*
From $100 to $149	$20.00
From 150 to 199	25.00
From 200 to 249	30.00
From 250 to 299	35.00
From 300 to 349	40.00
From 350 to 449	45.00
From 450	50.00 (Maximum)

Allowances for the services of an assistant surgeon will apply only to surgical procedures listed at $100 or more, and shall not apply to any operation performed outside of a hospital.

IN-HOSPITAL CONSULTATION SERVICE

One in-hospital consultation – in each specialty during any one illness or injury – between attending physician and an accredited specialist. Consultations may be in connection with any surgical or medical services but not for a condition arising out of pregnancy. Allowances are $30 toward the specialist's fee for a consultation requiring a complete physical examination with report, and $18 for a consultation requiring less than a complete physical examination.

IN-HOSPITAL MEDICAL SERVICE

Routine

Day	*Allowance Per Day*
1st	$15.00
2nd	10.00
3rd through 7th	7.50
8th through 14th	7.00
15th through 70th	6.00
71st through 201st	5.00

These payments also apply to Pulmonary Tuberculosis and Mental Disorders but payments are limited to 30 days in a Contract year.

Intensive

When an illness is of such a critical nature as to require repeated or prolonged attendance by the Physician, the Basic Program may make an additional allowance of $15 per day but limited to a maximum of 5 days during the period of hospitalization.

Premature Infants

4 pounds or less at birth	
1st week	$50.00 per week
2nd through 4th week	25.00 per week
5 pounds or less but more than 4 pounds at birth	25.00 per week

The maximum in any case shall not exceed $125.

MATERNITY

Surgical-Maternity Service

	Allowances	
	Obstetrics	*Anesthesia*
Miscarriage or abortion:		
Prior to five months of gestation, including dilation and curettage, in-hospital	$ 90	$ 25
After five months of gestation, including dilation and curettage, if any, in-hospital	125	25
Removal of extrauterine embryo (ectopic pregnancy), by laparotomy	200	40
Classic Caesarean section	250	50

Obstetric Service*

Normal Delivery	125	25
Miscarriage: prior to five months of gestation, no surgery	60	—
Abortion, other than listed above	60-115	25

ELECTRO-SHOCK THERAPY

	Allowances
For treatment, in or out of the hospital:	
Allowance per treatment	$ 15.00
Maximum per contract year	150.00

* **Balance of charge is not a Covered Medical Expense under Major Medical.**

DIAGNOSTIC X-RAY SERVICES

	Allowances
Ventriculography	$ 55.00
Skull, complete study	30.00
Ribs	20.00
Shoulder	15.00
Wrist	12.00
Hip, studies during operative procedures	35.00
Ankle	12.00
Upper gastro-intestinal tract with barium enema	45.00
Gall bladder, cholecystography	30.00
Colon by barium enema	35.00
Cholangiography, intravenous	40.00
Arteriography	50.00

The maximum Basic Program allowance per subscriber per Contract year for all diagnostic x-ray examinations combined shall not exceed $175.00.

If a subscriber receives one or more diagnostic x-ray examinations in any two-week period for which the Schedule of Allowances provided a total allowance of more than $20.00*, then the Basic Program will provide an allowance equal to that total amount set forth in the Schedule of Allowances, less a deductible of $20.00*. Where the x-ray examinations are made in connection with fractures, the two-week period shall not apply but instead the after-care period for the fracture as set forth in the Surgical Schedule section of the Schedule of Allowances shall apply.

EMERGENCY FIRST AID

Basic Program

Covers out-of-hospital first aid rendered by a doctor within 24 hours after injury is sustained.

Major Medical

Hospital or doctor expenses not covered under Blue Cross-GHI Basic Program are a Covered Medical Expense under Major Medical.

* These are Covered Medical Expenses under Major Medical.

RADIATION THERAPY

Malignant Conditions	*Allowance per Treatment*	*Maximum*
X-ray Therapy:		
Uterine cervix	$ 11.25	$275.00
Breast primary (inoperable)	11.25	275.00
Skin	25.00	125.00
Radiation and radioisotopes (sealed sources):		
Uterine cervix	137.50	275.00
Breast primary (inoperable)	112.50	225.00
Skin	62.50	125.00
Radioisotopes (non-sealed sources):		
Thyroid cancer	112.50	225.00
Chronic leukemia	87.50	175.00
Prostatic cancer	112.50	225.00
Total combined allowance for all treatments per Contract year		300.00

Benign Conditions		
X-ray Therapy:		
Acne	10.00	70.00
Angioma		
X-ray only	10.00	70.00
Radium	35.00	70.00
Bursitis	10.00	70.00
Endometriosis	10.00	100.00
Fungus infections	10.00	70.00
Lymphoid Tissue, x-ray	10.00	40.00
Radium applicator	35.00	70.00
Total combined allowance for all radiation treatments per Contract year		200.00

The Basic Program will not provide payment for more than one treatment per day nor for the treatment of more than one condition per day.

The Basic Program will not provide payment toward the cost of radium or other radioactive materials.

Most doctor expenses not covered in full by the Basic Program are Covered Medical Expenses under Major Medical to the extent that they are usual, reasonable, and customary.



Blue Cross
of Greater New York

AND



HEALTH INSURANCE PLAN

HEALTH INSURANCE PLAN OF GREATER NEW YORK (H.I.P.) AND BLUE CROSS

This plan has two parts – medical coverage provided by H.I.P. and hospital coverage provided by Blue Cross of Greater New York (see page 12).

H.I.P. medical care services are provided in 45 Medical Group Centers located throughout the Greater New York area.

The Medical Group is the foundation of health care in H.I.P. Each Medical Group consists of Family Doctors, Pediatricians, Gynecologists, and teams of medical specialists in fourteen fields of medicine.

In H.I.P. you have your own Family Doctor in your Medical Group who looks after your medical needs. Your Family Doctor also serves to refer you to H.I.P. specialists.

Medical, surgical, specialist, maternity and preventive care is provided as long as there is medical need. There are no deductibles, no coinsurance, no claim forms and no out-of-pocket money payments.

CHOICE OF MEDICAL GROUP

H.I.P. members have a choice among Medical Groups and among family doctors within the group selected. (See listing of H.I.P.'s Medical Groups). You may choose any Medical Group within the H.I.P. system. However, unless you reside in the Medical Group's service area, the Medical Group will not be required to provide home calls during normal hours. During the evening hours, weekends, and holidays when your Medical Group is not open, service will be provided through the Emergency Service Program operated by H.I.P.

H.I.P. members may change to another Medical Group or change family doctors within a Medical Group, provided that the doctor selected is available. On request, members of a family unit may choose a Medical Group different from the one chosen by the subscriber.

Emergency Visits. A subscriber may, without referral, elect to seek an emergency visit from any H.I.P. Medical Group for treatment of illness or accident.

Second Specialist Opinion. A second opinion specialist consultation from an H.I.P. Medical Group other than one's own Medical Group will be arranged by the Medical Group at the request of the subscriber.

Laboratory Procedures. Laboratory procedures, especially fasting blood workups, which are ordered by the member's Medical Group of record, may be arranged at any H.I.P. Group.

H.I.P. MEDICAL GROUPS PROVIDE THE FOLLOWING SERVICES WITHOUT DOCTORS' CHARGES AND WITHOUT LIMIT ON VISITS:

Surgery

Surgical care in the hospital, doctor's office and the home.

Specialist Services

Specialist care in doctor's office, hospital or the home.
Specialist consultations in and out of hospital.

Family Doctor Care

Office visits
Hospital visits
Home calls, day and night

Pediatrics

Well-baby and other care from date of birth.

Maternity

Maternity care (including delivery and care before and after birth).
Miscarriage and Abortion.

Gynecology

Diagnosis and treatment of women's diseases.

X-Ray and Laboratory Procedures

X-ray examinations, chemical and biological procedures in laboratory.
Deep X-ray treatments (for cancer, etc.).

Eye Care

Eye examinations and prescriptions for eye glasses (eye glasses are not included).

Physical Medicine

Physical therapy (heat treatments, massages, exercises, etc.).

Appliances such as wheelchairs, crutches, canes, walkers, and commodes loaned when ordered by H.I.P. physicians.

Preventive Care

Physical examinations.

Allergies

Treatment of allergies (hay fever, skin conditions, asthma, etc.). There is no charge for the serum used.

Immunizations and Drugs

Immunization services.

Immunization agents for polio, smallpox, flu, diphtheria, and other diseases.

Injectable drugs, such as penicillin, used most frequently in doctors' offices and medical group centers.

Neurology

Treatment of disorders of nervous system.

Psychiatry

Psychiatric consultation and diagnosis (treatment not included).

Private Ambulance Service

From home to hospital when requested by H.I.P. physician or group administrator.

Visiting Nurse Service

When requested by H.I.P. physician.

Services During Off-Hours

H.I.P. maintains a centralized doctors' emergency service to take care of illness or injury occurring at night, on week-ends and on holidays.

MAJOR SPECIALIST COVERAGE and PROCEDURES

In surgical procedures requiring special skills – such as the more difficult kinds of heart, brain and eye surgery – H.I.P. Medical Groups make available without charge the services of specialists and surgical teams with particular training and experience in those fields.

EMERGENCY SITUATIONS

Specified allowances up to $350* are paid if non-H.I.P. *physicians'* fees are incurred in the following situations:

- Emergency hospitalization as a result of injury or illness suffered while you are *outside* the area served by H.I.P. Medical Groups
- Emergency hospitalization as a result of injury *inside* the H.I.P. service area.
- Emergency treatment of non-hospitalized accidental injury during the first twenty-four hours, in or outside the area served by H.I.P. Medical Groups.

Deferred Coverage

If, on the date that coverage is to start, an employee is not at work, or a dependent is confined to a hospital or institution, coverage for that individual does not start until the employee returns to work, or the dependent is released from such confinement.

EXCLUSIONS

NOT INCLUDED are dental care; prescribed drugs and biologicals† (however, a number of widely used injectable drugs and immunization materials are provided without charge); eye glasses; artificial limbs and other prosthetic appliances†; purely cosmetic surgery; treatment for acute alcoholism and drug addiction; treatment by a psychiatrist after diagnosis. Also, illnesses or injuries which can be treated only in an institution other than a hospital for general care; anesthesia† when administered in a hospital; and certain services, such as the administration of blood and plasma, in a hospital where an H.I.P. Medical Group is unable to render the services because of hospital regulations. Workmen's Compensation and Veterans Administration cases are also excluded.

* $750 under Extended or Expanded Benefits Options.
† Covered under Extended or Expanded Benefits Option.

H.I.P.-BLUE CROSS EXPANDED BENEFITS OPTION

(through payroll deduction)

Hospitalization

This option increases your BLUE CROSS coverage to 120 FULL benefit days (from 21 days) and pays 50% of covered hospital expenses for an additional 180 days.

Anesthesia in Hospital

80 per cent of the anesthetist's bill is paid up to a maximum of $50 for anesthesia taking less than two hours to administer and up to $100 for anesthesia taking two hours or more in connection with procedures performed by H.I.P. Medical Groups (or in connection with covered emergency procedures performed by non-H.I.P. physicians).

Prescribed Drugs and Appliances

Drug Service Program — Prescription drugs* are given without charge when prescribed by H.I.P. physicians and obtained through the designated mail order pharmacy.‡

Drug Indemnity Program – Prescription drugs* prescribed by H.I.P. physicians (or by a non-H.I.P. physician in covered emergencies) and obtained through other then the mail order service program described above will be covered to the extent of 80 per cent of the cost above $25 per insured person during a contract year. There is no annual or lifetime maximum.

Appliances – Appliances and equipment (such as hospital beds) are covered under the *same $25 deductible* and 80 per cent sharing of cost described immediately above.

Private Duty Nursing

The plan pays 80% of the cost of in-hospital private duty nursing up to a maximum of 504 hours, after you pay the cost of the first 72 hours of such care. The services must be ordered by an H.I.P. physician or required in a covered emergency and must be provided by a registered nurse or a licensed practical nurse who is not a relative or a member of your household. There is a separate 72 hour exclusion and a separate 504 hour maximum for each† hospital confinement.

* For which a prescription is required.

† Successive hospital confinements are considered as one confinement if readmission occurs within ninety days of the previous discharge unless each confinement is the result of a different accidental injury.

‡ Members may have their prescriptions filled at the following Medical Group centers: Babylon, Staten Island, Queens Blvd., or at H.I.P., 625 Madison Avenue.

Additional Benefits for Emergency Care

Maximum of specified allowances is increased from $350 to $750 for physicians' fees for hospitalized illness or injuries in emergencies occurring *outside* the H.I.P. service area; for hospitalized injury in emergencies occurring *inside* the H.I.P. service area, and for non-hospitalized accidental injury during the first twenty-four hours *inside* or *outside* the H.I.P. service area.

If you are now enrolled for the H.I.P. Extended Benefits Option . . .

The Expanded Benefits Option described on pages 38 and 39 improves and expands the present Extended Benefits Option at an additional cost to you. If you are now enrolled for the present Extended Option, you may continue that coverage or change to the Expanded Option during a transfer period or at retirement.

Comparison of the Extended and Expanded Options

Benefit	*Extended Option**	*Expanded Option*
Private duty nursing	Not provided	Provided – see page 38
Drugs provided without charge through the designated mail order pharmacy.	Not provided	Provided – see page 38
Drugs not obtained through the mail order service program.	80% of covered expenses as described on page 38, except that deductible is $50.00 and there is a $1000 Annual Maximum; $2500 Lifetime Maximum	80% of covered expenses as described on page 38, except that deductible is $25.00 and there is no maximum
Appliances	Same for both Options – except for difference in deductibles	Same for both Options – except for difference in deductibles
Anesthesia Emergency Care 120 Hospital Days	Same for both Options	Same for both Options

H.I.P. SERVICE AREA

H.I.P. Medical Groups provide services in the five boroughs of New York City, in most of Nassau County, in western Suffolk County and in a section of Westchester County. If you live *outside* this area but within traveling distance of an H.I.P. Medical Group, you may join that Group. In that case you will receive fully prepaid care at the group's medical center, at the doctors' office and in the hospital. You will *not* receive home calls.

* Available only to employees enrolled in H.I.P. under this option on October 20, 1967.

HOW TO OBTAIN H.I.P. EMERGENCY CASH BENEFITS AND EXPANDED BENEFITS

1. Pay the doctor's fee, nurse's bill, anesthetist's bill, etc. H.I.P. will pay benefits to you directly.
2. Obtain proper claim forms from H.I.P. Claims Division.
3. Send *bills* and claim forms, if one is required, to:
   H.I.P. Claims Division
   625 Madison Avenue
   New York, N. Y. 10022
4. Claim Forms Required
   - Emergency Situations – Submit Claim Form #1, completed on both sides. Include bills.
   - Anesthesia – Submit Anesthesia Claim Form (215). Include anesthetist's bill.
   - Private Duty Nursing – No claim form is required. Submit itemized nursing bill.
   - Prescribed Drugs by Mail Order – No claim form is required. Mail order envelopes are supplied by the Drug Plan.
   - Prescribed Drugs obtained from other sources – Submit Claim Form #291. Include druggist bills. (Drugs must be prescribed by an H.I.P. doctor or obtained in a covered emergency.)
   - Prescribed Appliances and Equipment – Submit Claim Form #291. Appliances may be included with drugs on the same Claim Form.

LIST OF MEDICAL GROUPS AFFILIATED WITH H.I.P.

If you live outside the area served by all of these groups, you may select any group and receive all its services except home calls.

Medical Group Number	Bronx	Telephone Number	AREA SERVED
101	CENTRAL BRONX MEDICAL GROUP 16 EAST 169th ST., BX. 10452	LU 8-4300	Entire Borough of Bronx (except Rikers and North Brother Islands) Manhattan Zones 33, 34, and 40
201	CLINTON MEDICAL GROUP 2035 BENEDICT AVE., BX. 10462 NORTH BRONX BRANCH CENTER 1309 E. GUN HILL RD., BX. 10469	TY 2-0300 798-6200	Entire Borough of Bronx (except Postal Zones 51, 52, 53, 54, 56. Rikers and North Brother Islands not covered)
301	GRAND CONCOURSE MEDICAL GROUP 2021 GRAND CONCOURSE, BX. 10453 CO-OP CITY BRANCH CENTER 100 DONIZETTI PLACE, BX. 10475	LU 3-5575 671-8450	Bronx—Postal Zones 51, 52, 53, 54 (except North Brother and Rikers Islands), 55, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and City Island only of Zone 64
501	EAST BRONX MEDICAL GROUP 2590 FRISBY AVE., BX. 10461	TA 8-8200	Entire Borough of Bronx (except Rikers and North Brother Islands)
601	NORTHERN CITY MEDICAL GROUP, P.C. 115 DREISER LOOP, BRONX, N. Y. 10475	379-6600	Co-Op City—Bronx Postal Zones 61, 62, 64, 65, 66, 69, 75
701	SOUTHERN BRONX MEDICAL CENTER 326-8 E. 149th ST., BRONX, N. Y. 10451	585-6100	Bronx—Postal Zones 51, 52, 54, 55, 56, 59
	(Manhattan groups 403, 803 and 1103 also cover certain postal zones in the Bronx)		
	Brooklyn		
102	CENTRAL MEDICAL GROUP OF BROOKLYN 345 SCHERMERHORN ST., BKLYN. 11217	UL 8-6300	Entire Borough of Brooklyn (Brooklyn Area of Postal Zones only)
202	BROOKLYN MEDICAL GROUP 153 PIERREPONT ST., BKLYN. 11201 WILLIAMSBURG AREA OFFICE 202 UNION AVE., BKLYN. 11211	MA 5-6707 MA 5-6707	Entire Borough of Brooklyn
302	FLATBUSH MEDICAL GROUP 1000 CHURCH AVE., BKLYN. 11218	IN 9-6000	Brooklyn—Postal Zones 3, 4, 9, 10, 12, 14, 15, 18, 19, 20, 23, 24, 25, 26, 28, 29, 30, 32, 34, 35
402	EMPIRE MEDICAL GROUP 550 EASTERN PARKWAY, BKLYN. 11225	SL 6-7500	Brooklyn—Postal Zones 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 28, 30, 31, 32, 33, 34, 36, 38 and Brooklyn Area only of Zones 27 and 37
502	KINGS HIGHWAY MEDICAL GROUP 3245 NOSTRAND AVE., BKLYN. 11229	996-9300	Brooklyn—Postal Zones 3, 4, 10, 14, 23, 24, 26, 29, 30, 34, 35, 36
602	PARKWAY MEDICAL GROUP 1235 LINDEN BOULEVARD BROOKLYN, N. Y. 11212	495-4500	Entire Borough of Brooklyn EXCEPT Postal Zones 1, 9, 11, 14, 20, 22, 24, 28, 31 and 32 (Queens Area of Brooklyn Postal Zones 27 and 37 not covered)
702	MIDBORO MEDICAL GROUP 1783 BEDFORD AVE., BKLYN. 11225	IN 9-4900	Entire Borough of Brooklyn EXCEPT Postal Zones 1, 2, 5, 9, 11, 20, 22, 27, 28, 31, 32 and 37
802	BAY RIDGE MEDICAL GROUP 6740 THIRD AVE., BKLYN. 11220	TE 9-1414	Brooklyn—Postal Zones 4, 9, 14, 15, 18, 19, 20, 23, 28, 30, 32
902	BEDFORD-WILLIAMSBURG MEDICAL GROUP 1143 DEKALB AVE., BKLYN. 11221	442-7300	Brooklyn—Postal Zones 1, 5, 6, 7, 8, 11, 12, 13, 16, 17, 21, 22, 27, 33, 36, 37, 38
	Manhattan		
103	CENTRAL MANHATTAN MEDICAL GROUP 65 WEST 55th ST., N. Y. 10019 GRAND STREET BRANCH CENTER 570 GRAND ST., N. Y. 10002	JU 2-7117 674-8210	Entire Borough of Manhattan
403	METROPOLITAN-HUDSON MEDICAL GROUP 6 WEST 86th ST., N. Y. 10024	TR 3-1040	Entire Borough of Manhattan Bronx—Postal Zones 51 52, 53, 56, 57, 58
503	YORKVILLE MEDICAL GROUP 158 EAST 84th ST., N. Y. 10028 EAST HARLEM BRANCH CENTER 1760 THIRD AVE., N.Y. 10029 (ENTRANCE ON 97th STREET)	TR 9-4624 860-1444	Manhattan—Postal Zones 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 28, 29, 35, 37, 38
603	LOWER MANHATTAN-GRAMERCY MEDICAL GROUP 781 BROADWAY, N. Y. 10003	OR 4-8370	Entire Borough of Manhattan
803	WASHINGTON HEIGHTS MEDICAL GROUP 4337 BROADWAY, N. Y. 10033	LO 8-6300	Manhattan—Postal Zones 25, 26, 27, 30, 31, 32, 33, 34, 37, 39, 40 BRONX—Postal Zones 51, 52, 53, 56, 63, 68, 71
1003	NEW YORK MEDICAL GROUP 324 EAST 23rd ST., N. Y. 10010	SP 7-1100	Manhattan—Postal Zones 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29, 36, 38
1103	UPPER MANHATTAN MEDICAL GROUP 1845 AMSTERDAM AVE., N. Y. 10031	TO 2-7200	Manhattan—Postal Zones 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 39, 40 Entire Borough of Bronx, EXCEPT Postal Zones 58, 60, 61, 62, 64, 65, 66, 67, 69, 70, 71, 72, 73, 75
1203	CIRCLE MANHATTAN MEDICAL GROUP 123 WEST 79th ST., N. Y. 10024	SU 7-0200	Entire Borough of Manhattan
	(Bronx group 103 also covers some postal zones in Manhattan.)		

(Continued)

Medical Group Number	Queens	Telephone Number	AREA SERVED
104	**LAGUARDIA MEDICAL GROUP P.C.** **ADMINISTRATIVE CENTER** **88-22 161st ST., JAMAICA, N. Y. 11432**	297-8600	Entire Borough of Queens, Brooklyn 8 and Queens Area of Brooklyn 27 and 37
	(1) QUEENS BOULEVARD CENTER **84-15 QUEENS BLVD., ELMHURST, N. Y. 11373**	899-6600	NASSAU COUNTY—Great Neck, New Hyde Park, Lake Success, Floral Park, Elmont, Bellerose, Hewlett, Cedarhurst, Lawrence, Inwood, Valley Stream, Woodmere and Woodsburgh
	(2) QUEENSBORO CENTER **88-19 161st ST., JAMAICA, N. Y. 11432**	297-8600	
	(3) ROCHDALE CENTER **169-59 137th AVE., JAMAICA, N. Y. 11434**	276-0300	
	(4) RICHMOND HILL SUBCENTER **125-06 101st AVE., RICHMOND HILL, N. Y. 11419**	849-2900	
	(5) QUEENS VILLAGE SUBCENTER **112-18 SPRINGFIELD BOULEVARD** **QUEENS VILLAGE, N. Y. 11429**	479-6600	
	(6) NEW HYDE PARK SUBCENTER **271-11 UNION TURNPIKE** **NEW HYDE PARK, N. Y. 11040**	343-0600	
	(7) ROCKAWAY SUBCENTER **29-15 FAR ROCKAWAY BLVD.** **FAR ROCKAWAY, N. Y. 11691**	337-7000	
	(8) ASTORIA SUBCENTER **32-75 STEINWAY STREET,** **ASTORIA, N. Y. 11103**	728-6001	
	(9) LAGUARDIA HOSPITAL CENTER **102-01 66th ROAD, FOREST HILLS, N. Y. 11375** **(This is NOT a primary center)**	896-2000	
204	**CENTRAL FLUSHING UPPER QUEENS MEDICAL GROUP**		QUEENS—POSTAL ZONES 2, 11, 12, 13, 15, 18, 21, 22, 23, 24, 26, 27, 28, 29, 32, 33, 34, 35, 36, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79
	ADMINISTRATIVE CENTER **59-25 KISSENA BLVD., FLUSHING, N. Y. 11355**	961-7000	Queens Area only of Brooklyn zones 27, 37
	UPPER QUEENS CENTER **59-25 KISSENA BLVD., FLUSHING, N. Y. 11355**	961-7000	NASSAU — ONLY the following communities in Nassau are covered: East Valley Stream, Valley Stream, Great Neck, Great Neck Estates, Lake Success, Kensington, Kings Point, Russell Gardens, Saddle Rock
	CENTRAL FLUSHING CENTER **135-40 39th AVENUE, FLUSHING, N. Y. 11354**	961-7200	

(Nassau group 106 also covers some postal zones in Queens.)

	Richmond		
105	**STATEN ISLAND MEDICAL GROUP** **307 VICTORY BOULEVARD** **NEW BRIGHTON, STATEN ISLAND 10301**	GI 2-6500	Entire Borough of Richmond
	NEW DORP BRANCH CENTER **319 CLAWSON STREET** **STATEN ISLAND, N. Y. 10306**	EL 1-3187	
	GREAT KILLS SUB-CENTER **79 GIFFORDS LANE** **GREAT KILLS, S. I. N. Y. 10308**	356-2424	
	Most of Nassau and Part of Suffolk		NASSAU COUNTY—All of Nassau County EXCEPT the communities listed below: Atlantic Beach, Bayville, Centre Island, Cold Springs, Cove Neck, East Norwich, Glen Cove, Island Park, Lattingtown, Laurel Hollow, Lawrence Beach, Lido Beach, Locust Valley, Long Beach, Mattinecock, Mill Neck, Muttontown, Oak Neck, Oyster Bay, Oyster Bay Cove, Point Lookout, Woodbury
106	**CENTRAL NASSAU MEDICAL GROUP** **226 CLINTON ST., HEMPSTEAD, N. Y. 11550**	IV 3-2020	SUFFOLK COUNTY—ONLY the following communities in Suffolk are covered: Amityville, Copiague, Farmingdale, Lindenhurst, Pine Lawn, West Babylon
			QUEENS COUNTY—Only Zones 11, 13, 22, 26, 27, 28, 29, 62, 63, 91, 92, 96
206	**EAST NASSAU MEDICAL GROUP** **350 SOUTH BROADWAY** **HICKSVILLE, N. Y. 11801**	WE 8-0100	NASSAU COUNTY—ONLY the following communities in Nassau County are covered: Bellmore, Bethpage, Biltmore Shores, Brookville, Carle Place, Cold Springs, East Farmingdale, East Hempstead, East Meadow, Farmingdale, Hicksville, Jericho, Levittown, Locust Grove, Massapequa, Massapequa Park, Melville, Merrick, Nassau Shores, New Cassel, North Bellmore, North Massapequa, North Merrick, Old Bethpage, Old Westbury, Plainedge, Plainview, Seaford, South Farmingdale, Syosset, Wantagh, Washington Terrace Park, Uniondale, West Amityville, Westbury, Wheatley, Woodbury.
	SUFFOLK CENTER **300 BAY SHORE ROAD** **NO. BABYLON, N. Y. 11703**	586-2700	SUFFOLK COUNTY—ONLY the following communities in Suffolk County are covered: Amityville, Babylon, Belmont Park, Copiague, Deer Park, Edgewood, Lindenhurst, Maywood, North Babylon, Pinelawn, West Babylon, West Islip, Wyandanch.

(Central Flushing—Upper Queens Group 204 also covers some communities in Nassau County.)



Blue Cross
of Greater New York

AND

GHi

GROUP HEALTH INCORPORATED

BLUE CROSS AND GROUP HEALTH INCORPORATED (GHI)

This plan has two parts—medical coverage provided by GHI and hospital coverage provided by Blue Cross of Greater New York (see page 12).

BENEFITS IN BRIEF

The following benefits are covered under GHI's Schedule of Allowances or are Paid in Full when provided by Participating Doctors or Laboratories:

- Per Schedule of Allowances or Paid in Full When Provided By Participating Family Doctors (usually general practitioners):

Home and Office Visits
Annual Physical Checkups
Diagnostic X-rays and Laboratory Examinations
Surgery
Doctor Visits in the Hospital
Maternity Care
Premature Infant Care
Allergy Treatment
Well-Baby Care—home and office only
Radiation Therapy

- Per Schedule of Allowances or Paid in Full When Provided By Participating Physicians (usually specialists):

In-Hospital Surgery
In-Hospital Anesthesia
Doctor Visits in the Hospital
Premature Infant Care in the Hospital
Specialist Consultations
Radiation Therapy in the Hospital

- Per Schedule of Allowances or Paid in Full When Provided By Participating Roentgenologists or Laboratories

Diagnostic X-rays and Laboratory Examinations

- Per Schedule of Allowances or Paid in Full When Provided By Participating Psychiatrists

Shock Therapy
In-Hospital Psychiatric Care

- Per Schedule of Allowances or Paid in Full When Provided By Participating Psychologists

In-Hospital Psychiatric Care

Visiting Nurse Service — *Paid In Full*

CASH ALLOWANCES ONLY — not paid in full

- Ambulance Service
- Nursing, Ambulance and Appliance Benefits
- Drugs and Medicines **(Only under Optional Benefits Rider)**

HOW THE PLAN WORKS

Payments for covered services are based on GHI's Schedule of Allowances. Participating doctors will accept GHI scheduled allowances as payment in full. There are no deductibles or co-insurance for *doctor services* covered under the GHI Plan.

Free Choice of Doctors

You may choose any doctor, anywhere in the world, and receive scheduled cash allowances toward all of your GHI Plan services. If you choose a doctor who is not a GHI Participating Doctor, you must pay him yourself. GHI will mail you a check for its scheduled allowance. You are responsible for the difference, if any, between the doctor's charge and GHI's payment.

Paid-in-Full Benefits

If you use a GHI Participating Doctor in the New York Metropolitan Area, he will accept GHI allowances as payment in full for most covered services and he will await payment from GHI. You do not have to pay a participating doctor.

To obtain the name of a participating doctor or participating medical group which may be available in your area, contact GHI at 736-7979.

A "participating medical group" is a group practice center which has agreed to await payment from GHI and to accept GHI allowances as payment in full for most covered services if notified by the subscriber before services are rendered that GHI is the insurer.

Know the Rules

To receive GHI Paid-In-Full benefits, you must follow these two simple rules:

1. Show the GHI Participating Doctor your GHI I.D. card before receiving care.
2. Apply for and use semi-private or ward accommodations if hospitalized.

BENEFITS IN DETAIL	*GHI Pays*
Home Calls	$ 8.00*
Office Visits	5.00

For: general medical care; physical checkups; visits for immunizations; treatment of illness; well-baby care; and allergy treatment (maximum 16 visits each person each year for allergy care).

Doctor Visits in the Hospital

For treatments by your doctor if you are in the hospital for non-surgical conditions and for in-hospital premature infant care (if infant weighs less than 4½ pounds at birth).

	GHI Pays
1st Day	$15.00
2nd Day	10.00
3rd-7th Day, per day	7.50
8th-21st Day, per day	7.00
22nd-70th Day, per day	6.00
71st Day and Over, per visit (Maximum one visit per day)	6.00

Diagnostic X-Rays and Laboratory Examinations – GHI pays scheduled allowances for diagnostic tests in your home, in your doctor's office, in licensed laboratories or in the out-patient department of a hospital. Diagnostic laboratory allowances are subject to adjustment when tests are performed in automated facilities. *No payment is made for simple urinalyses, hemoglobin determinations or fluoroscopies.*

DIAGNOSTIC X-RAY PROCEDURES	*Specialist*	*All Others*
Chest	$17.00	$12.00
Upper gastro-intestinal tract	85.00	35.00
Foot	25.00	9.00
Gall bladder	50.00	19.00
Shoulder	25.00	13.00
Colon by barium enema	60.00	25.00
Spine, cervical	35.00	17.00
Knee	25.00	13.00
Hand	25.00	9.00
Ankle	25.00	9.00
Skull study, complete	45.00	26.00

LABORATORY EXAMINATIONS	*GHI Pays*
Cross-matching	$ 4.00
Sedimentation rate	2.00
Agglutination series	5.00
Electrocardiogram	10.00

* An additional $2.00 may be charged by Participating Family Doctors for visits between 8:00 P.M. and 10:00 P.M. and $7.00 for visits between 10:00 P.M. and 9:00 A.M.

Multiple Visits at Home — If more than one patient is treated during the same home visit, GHI will pay $8.00 for the first patient and $5.00 for each additional patient treated by the physician during the visit. There is no maximum number of subscribers who can be treated by a doctor during a home call. Participating Family Doctors have agreed to accept GHI's allowances as payment in full for these services.

RADIATION THERAPY	*GHI Pays per Treatment Out of the Hospital*	*GHI Pays per Treatment In the Hospital*
Superficial		
Benign		
1 to 3 fields	$ 7.50	$10.00
More than 3 fields	10.00	15.00
Maximum per year	50.00	No maximum
Malignant	10.00	15.00
Deep		
Benign	15.00	30.00
Maximum per year	300.00	No maximum
Malignant	15.00	30.00

Surgery – Out of the Hospital – GHI pays scheduled allowances for surgery, including aftercare, in your doctor's office or in your home. (Anesthesia is not covered out of the hospital).

	GHI Pays Surgery – Out of the Hospital
Sigmoidoscopy, diagnostic, initial	$15.00
Suture of wounds	
one or two sutures	10.00
each additional suture	3.00
maximum: $50.00	
Local excision of small benign lesion	15.00
Electro-cauterization of small local lesion	10.00

Surgery and Anesthesia – In the Hospital – GHI pays scheduled allowances for surgery, including aftercare. Scheduled allowances are also paid for in-hospital anesthesia in connection with covered in-hospital surgery, maternity or shock therapy. Allowances for anesthesia include pre- and post-operative visits and the administration of fluids or blood and are only paid if anesthesia is administered in the operating room of a hospital by an anesthesiologist who is not the surgeon, his assistant or a hospital employee.

	GHI Pays Surgery	*GHI Pays Anesthesia*
Sigmoidoscopy, diagnostic, initial	$ 25.00	$ 30.00
Suture of wounds		
one or two sutures	15.00	None
each additional suture	5.00	None
maximum: None		
Local excision of small benign lesion	50.00	None
Tonsillectomy and/or Adenoidectomy,		
under age 12	130.00	50.00
age 12 and over	165.00	50.00
Panhysterectomy	700.00	140.00
Repair of hernia, inguinal, single	325.00	80.00
Appendectomy	350.00	80.00
Cystoscopy with ureteral catheterization	135.00	40.00
Extraction of lens, with iridectomy	650.00	135.00
Submucous resection	300.00	65.00

Multiple Procedures

If two or more surgical procedures are performed concurrently, the maximum payment allowed shall be the greatest payment, plus one-half of the lesser payments, but not more than two times the greatest.

Procedures performed at one time through the same incision or approach are considered as one surgical procedure and payment is made for the single procedure with the highest allowance.

Concurrent Care

You are normally covered for the services of only one doctor at a time and for one type of service at a time in a hospitalized case. However, GHI pays for Anesthesia and Consultations in addition to other in-hospital care and pays for deep X-ray therapy and In-Hospital Medical Care, or for In-Hospital Psychiatric Care and Shock Therapy even if performed concurrently and by more than one doctor. Regardless of the number of doctors involved in one hospital admission, GHI pays only for that one of the following types of services rendered which requires it to make the largest payment: In-Hospital Medical Care, Surgery, Care for Premature Infants, In-Hospital Psychiatric Care or Maternity Care. GHI may make an additional payment whenever adequate care requires the services of more than one doctor or more than one type of concurrent care in situations other than those mentioned above.

Preventive Care – Office visit allowances are paid for visits to the doctor's office for annual physical checkups, immunizations, booster shots, and physical examinations during the early years of a child's life.

Ambulance Service – GHI pays up to $25 per trip for a private professional ambulance service to and/or from a hospital if you are admitted for any service covered by your Contract except maternity care. (See page 50 for additional Ambulance benefits.)

Specialist Consultations – GHI pays the allowances listed below for one in-hospital consultation in each specialty field per period of hospitalization providing the patient is a bed patient and the consultant does not become the surgeon or obstetrician during that period of hospitalization. Allowances are paid for one out-of-hospital consultation in each specialty field each calendar year providing the consultant does not become the surgeon or obstetrician within three months. A referral by the attending doctor is required in order to receive a consultation allowance. Specialist consultations as described above are *PAID-IN-FULL* benefits. Subsequent visits are paid for as office visits but not

on a paid-in-full basis. Consultations in the fields of pathology, roentgenology and anesthesiology are not paid for.

	GHI Pays
In-Hospital – Complete Examination*	$35.00
In-Hospital – Partial Examination	25.00
Office – Complete Examination*	25.00
Office – Partial Examination	20.00
Home – Complete Examination*	35.00
Home – Partial Examination	25.00

* In fields of internal medicine, pediatrics, and neurology.

Referral To a Specialist

When your family doctor wants to refer you to a specialist, ask him to select a GHI PARTICIPATING PHYSICIAN. If he has questions, he can call GHI's Professional Relations Department, (212) 564-8900.

Maternity Care – Scheduled allowances are paid for all covered females who are insured when the pregnancy terminates.

	GHI Pays	
	Obstetrical	*Anesthesia*
Normal delivery	$150.00	$35.00
Caesarean section	250.00	55.00
Ectopic pregnancy	225.00	55.00
Miscarriage or abortion with dilation and curettage	75.00	25.00
Miscarriage or abortion without dilation and curettage	50.00	None

These allowances include doctor visits before and after childbirth. GHI also pays for diagnostic examinations and specialist consultations.

Visiting Nurse Service — GHI pays in full for home visits by a Registered Nurse (RN) from an accredited Visiting Nurse Service in all cases covered by the Contract. First your doctor must make the necessary arrangements, then you must show the Nurse your GHI ID Card.

In-Hospital Psychiatric Care — GHI pays its allowances listed under "Doctor Visits in the Hospital" for care by a psychiatrist or duly certified and registered psychologist in a general hospital.

Shock Therapy – Out of Hospital – GHI pays $20 per treatment up to 10 treatments for each person in each calendar year.

Shock Therapy – In the Hospital – GHI pays $30 per treatment. There is no maximum number of treatments.

HOW TO RECEIVE GHI BENEFITS

1. If you use a PARTICIPATING DOCTOR, show him your GHI Identification Card *before* he treats you.

(Continued)

2. After service is rendered, make sure your doctor gives you a GHI Claim Form. *You* fill out the top portion: subscriber's name, full address, certificate number, group number, patient's name and birthdate, then

3. Have your doctor fill out and sign his portion of the Claim Form. You then sign your portion.

4. The completed Claim Form should be mailed promptly to:

   Group Health Incorporated
   227 West 40th Street
   New York, N. Y. 10018

NOTE: Except for 1, repeat the same steps with non-participating doctors.

NURSING, AMBULANCE AND APPLIANCE BENEFITS

Professional Nursing Service in your home or in the hospital (except for nursing care for a normal obstetrical delivery) when your attending physician prescribes care and it is given by a licensed Registered Nurse (RN). If no Registered Nurse is available when your doctor requests one, a Licensed Practical Nurse (LPN) may be substituted at the doctor's request. A statement by your doctor explaining the need for an LPN should be attached to the GHI Claim Form.

Ambulance Service – for charges over and above the basic $25 allowance when in-hospital care (including maternity care) or care for accidental injuries is rendered.

Purchase, Rental and Repair of certain appliances and equipment such as hospital beds, crutches, walkers, wheelchairs, belts, trusses, lamps, diathermy equipment, artificial eyes and limbs, other prosthetic (non-dental) appliances, orthopedic appliances (except splints and casts and incontinence appliances).

Oxygen, its administration and the rental of equipment for its administration.

HOW PAYMENTS ARE MADE FOR NURSING, AMBULANCE AND APPLIANCE BENEFITS

One $25 DEDUCTIBLE is applied to these benefits *for you and your family* for each calendar year. A deductible is what you must pay for the above services before your GHI insurance begins to pay.

Once you meet this initial deductible, GHI pays 80% of your bills for these covered expenses, up to $2,500 per year per person. No lifetime maximum is applied to these GHI benefits.

THREE-MONTH CARRY OVER

If your family's covered expenses do not exceed the required deductible in any calendar year, all bills you incur *during the last three months* of that calendar year may be included in the amount needed to satisfy the deductible for the next year. In such event, you have up to fifteen months in which to satisfy the deductible.

HOW TO APPLY FOR NURSING, AMBULANCE AND APPLIANCE BENEFITS

1. Save all itemized bills and cash receipts for items covered.
2. List all covered expenses on the special GHI Claim Form #678, available at your work location and from GHI.
3. Attach all nursing, ambulance and equipment bills to the completed Claim Form and mail it promptly to GROUP HEALTH INCORPORATED, 227 West 40th Street, New York, N. Y. 10018.

GHI-BLUE CROSS OPTIONAL BENEFITS*

(through payroll deduction)

EXTENDED BENEFITS

• HOSPITALIZATION

This option increases your BLUE CROSS coverage to 120 FULL benefit days (from 21 days) and pays 50% of covered hospital expenses for an additional 180 days.

• DRUGS AND MEDICINES

After a $25 annual family deductible, GHI will pay for drugs and medicines requiring prescription (except vitamins and food supplements) prescribed in writing by a doctor and dispensed by a licensed pharmacy for out-of-hospital use (up to $2,500 per calendar year per person) to the extent that the charge is proper and not excessive.

> You should submit drug claims on GHI Form #678 as described on page 51. Drug bills need not be submitted unless requested.

120 DAY RIDER

This option consists of coverage only for the Blue Cross 120 Day hospitalization coverage described above. This Rider is restricted to employees whose Welfare Fund coverage provides some type of drug benefits.

DRUG RIDER

Benefits are identical to the Drugs and Medicines benefit described above. This Rider is available only to those employees whose Welfare Fund pays for the 120 day hospitalization benefit.

* If you select an optional benefits rider that you are not eligible for, GHI may enroll you under the rider for which you are eligible.

Questions? Need Help?

Call GHI's special Government Unit at (212) 736-7979. When GHI's representative comes on the line, please give your name and certificate and group numbers as they appear on your GHI ID Card.

OTHER EXCLUSIONS

- Services and supplies not required in accordance with accepted standards of medical or psychiatric practice and services in excess of those normally required for treatment of the illness or condition.
- Services and supplies not described.
- Cosmetic surgery or treatment.
- Services and supplies by a dentist or dental surgeon if not ordinarily performed by a general surgeon.
- Care of the feet outside the hospital. There are no benefits for treatment of the feet outside the hospital if the treatment relates to corns, bunions, calluses, nails (except removal of entire nail), flat feet, fallen arches, weak feet, or chronic foot strain.
- Out-of-hospital care of psychiatric illness except for Shock Therapy, Consultations or Ambulance.
- Well-baby care in the hospital unless infant is premature and weighs less than 4½ pounds at birth.
- Additional charges by the attending surgeon or any other person for surgically-related services during the after-care period as shown in the Master Schedule of Allowances.
- Hormone injections or other injections unless they are specifics for a particular disease.
- Examination of the eyes for glasses; eyeglasses or hearing aids or for their repair.
- Workmen's Compensation or Veterans Administration cases, or other services for which no cost is incurred.
- Cases not involving a legally enforceable charge by a doctor.
- Pulmonary tuberculosis unless in a general hospital.
- Hospital charges made by a hospital.

- Hospitalization primarily for bed-rest or in an institution other than a general hospital.
- Charges for services and other expenses to the extent that they are covered by any other insurance issued under a group plan pursuant to which an employer, union or welfare fund pays out some part or all of the cost or makes a payroll deduction, and
- Any examination performed at, or in connection with a visit to, a screening or diagnostic center or other facility or institution established primarily for mass examinations, and diagnostic services rendered in connection with such an examination.

OTHER LIMITATIONS

- 4 physiotherapy treatments or osteopathic manipulations in an illness.
- $100 for out-of-hospital surgery for benign skin lesions per calendar year.
- $50 per calendar year for plantar warts.

FILING OF CLAIMS

Claim Forms must be submitted to GHI within 30 days after the termination of the services or within 45 days of the time the services began, whichever is earlier.

BENEFITS AFTER TERMINATION OF COVERAGE

If coverage terminates for any reason, benefits for the following are provided as though termination had not occurred:

1) In-Hospital Medical Care when hospitalized on the date of termination or admitted to the hospital for services within 31 days after termination for a condition which existed on the date of termination, until the patient leaves the hospital.

2) Surgery performed within 31 days after termination provided the condition requiring the surgery existed on the date of termination.

3) Certain complications of pregnancy until termination of the pregnancy.

MEDICAL RECORDS

EMERGENCY PHONE NUMBERS

This booklet is provided for your information only and contains a summary of the benefits available under each Plan in the New York City Health Insurance Program. The benefits are subject to: (1) terms, conditions and limitations of the contracts issued by Blue Cross of Greater New York; Group Health Incorporated (GHI); Health Insurance Plan of Greater New York (H.I.P.); (2) provisions of applicable state laws and (3) regulations established by the City of New York.

Keep this booklet and refer to it whenever you have a question concerning your Health Insurance Program.

EXHIBIT A, ANNEXED TO FOREGOING EXHIBIT

New York City Health Plans
Pamphlet, dated October 1, 1973

ONLY COPY AVAILABLE

AFFIDAVIT OF DAVID W. FISHER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WOMEN IN CITY GOVERNMENT UNITED BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN CROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated,

Plaintiffs,

-against-

THE CITY OF NEW YORK: ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK: JOHN V. LINDSAY: HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION: NEW YORK CITY HOUSING AUTHORITY: NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR. MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND,

Defendants.

AFFIDAVIT

74 Civ 304

----------x

STATE OF NEW YORK)
SS.:
COUNTY OF NEW YORK)

DAVID W. FISHER, being duly sworn, deposes and says:

1. That I am an attorney in the Office of Adrian P. Burke, Corporation Counsel, of the City of New York,

attorney for defendant The City of New York, Abraham Beame as Mayor of the City of New York; Harry Bronstein, as City Personnel Director; New York City Health and Hospital Corporation, New York City Off-Track Betting Corporation; Joseph Monserrat, Seymour P. Lachman, Isaish E. Robinson, Jr.; Mary E. Meade, Constituting the Board of Education of the City of New York.

2. I make this affidavit to aid the Court in disposing of this case.

3. There is pending in this Court another similar action, Monell, et al. v. Department of Social Services of the City of New York, et al. 71 Civ 3324 (a copy of the amended complaint is annexed hereto as Exhibit 1).

4. The Monell case involves the maternity leave regulations of the agencies of the City including the Board of Education of the City of New York and asks for damages resulting therefrom.

5. The named plaintiffs in the Monell case are all employees of the Board of Education and the Department of Social Services. Except for one plaintiff the named plaintiffs in the instant case are also employed by these same two agencies.

6. In a memorandum opinion by Judge Motely, in the Monell case the Court determined that the Monell case could be maintained as a class action including as plaintiffs the "numerous women employees in the City of New York's many agencies." 4 EPD 5936, 5938 (1972).

7. A comparison of the two cases shows that the same class is alleged to be represented as in the instant case. The defendants, City agencies, are the same in both cases and the subject matter of the plaintiffs' causes of action, Nos. 7 through 11 in the instant case will litigate the same issues as raised by the Monell case.

8. It would lead to great inconvenience to the Court and to the defendants to litigate, as between the same plaintiffs and defendants, the same issues in the same court.

WHEREFORE, it is respectfully requested by the defendants that such parts of the instant case which raise similar issues and seek similar relief from the City defendants as the Monell case be dismissed.

DAVID W. FISHER

Sworn to before me this

day of July, 1974.

EXHIBIT 1, ANNEXED TO FOREGOING AFFIDAVIT

Complaint in Monell, et al. v. Department of Social Services of the City of New York et. al. (Dkt No. 71 Civ 3324)

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE MONELL, SUSAN TERRALL, BEVERLY ZAPATA and CAROL ABBEY, on their own behalf and on behalf of all others similarly situated,	:	
Plaintiffs,	:	AMENDED COMPLAINT CLASS ACTION
-against-	:	71 Civ. 3324
DEPARTMENT OF SOCIAL SERVICES OF THE CITY OF NEW YORK, JULE M. SUGARMAN, as Commissioner of the Department of Social Services, BOARD OF EDUCATION OF THE CITY OF NEW YORK: HARVEY B. SCRIBNER, as Chancellor of the City School District of the City of New York; and JOHN V. LINDSAY, as Mayor of the City of New York,	:	
Defendants.	:	

JURISDICTION

1. Jurisdiction over this action is invoked pursuant to 28 U.S.C. 1343(3) and (4) relating to actions under 42 U.S.C. 1981, 1983 and 2000e et seq. and the Constitution of the United States, in particular the First, Ninth and Fourteenth Amendments.

2. Jurisdiction over this action is also invoked pursuant to 42 U.S.C. 2000e-5(f)(3) relating to actions under 42 U.S.C. 2000e et seq. . (Title VII of the Civil Rights Act of 1964)

3. Plaintiffs' action for declaratory and injunctive relief and for damages is authorized by 28 U.S.C. 2201 and 2202, 42 U.S.C. 1981 and 1983 and by 42 U.S.C. 2000e-5(g).

CLASS ACTION ALLEGATIONS

4. Plaintiffs sue on their own behalf and on behalf of all others similarly situated pursuant to Rule 23(b)(c) and (3) of the Federal Rules of Civil Procedure. Defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class.

5. Plaintiffs represent, on information and belief, over one thousand women who are City employees, either of the Board of Education or the Department of Social Services, or other city agencies who have been, or will be arbitrarily compelled to take an unpaid leave of absence from their employment solely because of their pregnancy when they wished to and were physically capable of continuing to work. In bringing this action, these women are exercising their rights under the First, Ninth and Fourteenth Amendments to the United States Constitution, in particular, their rights to bear children and remain full, active and equal members of society without the arbitrary and capricious interference of their employers. All of these women wish to make the private determination of when to terminate their employment because of their pregnancy without the arbitrary interference and unreasonable discrimination of City compulsory maternity leave

policies which deprive them of their civil rights under color of law. The members of the class are so numerous that joinder of all of them is impracticable.

6. Plaintiffs are women who have already had their employment unconstitutionally terminated because of City policies of compulsory maternity leave, but sue on behalf of all other women, for whom questions of law and fact would be the same. Plaintiffs adequately and fairly represent all members of the class since all women city employees are, have been, or would be subject to the unconstitutional policies of compulsory maternity leave.

7. Plaintiffs know of no conflicts of interest among the members of the class.

8. Plaintiffs claims are typical of the claims of the class.

9. There are questions of law and fact common to the class concerning whether Board of Education and Department of Social Services Policies as they relate to compulsory maternity leave for women employees are constitutional on their face and as applied by defendants in violation of the First, Ninth and Fourteenth Amendments.

10. The questions of law and fact common to the members of the classes predominate over any questions affecting only individual members. A class action is superior to other available means for the fair and efficient adjudication of the controversy.

Plaintiffs know of no interest of members of the class in individually controlling separate actions. Plaintiffs know of no difficulties likely to be encountered in the management of a class action.

PLAINTIFFS

11. JANE MONELL is a citizen of the State of New York and of the United States.

12. Until unlawfully compelled to take a leave of absence because of pregnancy, Ms. Monell was employed as a Supervisor at the Bureau of Child Welfare, Department of Social Services of the City of New York.

13. SUSAN TERRALL is a citizen of the State of New York and of the United States.

14. Until unlawfully compelled to take a leave of absence because of pregnancy, Ms. Terrall was employed by the Board of Education of the City of New York as a teacher of English as a second language in the Work Incentive Program for Adult Education. Prior to said involuntary leave of absence, Ms. Terrall had been employed as a teacher for 10 months in the Work Incentive Program with a junior high school provisional regular license.

15. BEVERLY ZAPATA is a citizen of the State of New York and the United States.

16. Until unlawfully compelled to take a leave of absence because of pregnancy, Ms. Zapata was employed by the Board

of Education of the City of New York as a teacher of basic education courses in the Work Incentive Program. Prior to her compelled leave of absence, she had been employed as a teacher in the Work Incentive Program with a Regular Common Branches License.

17. Plaintiff, CAROL ABBEY is a citizen of the State of New York and the United States.

18. Until unlawfully compelled to take a leave of absence because of pregnancy, Ms. Abbey was employed as an English teacher by the Board of Education of the City of New York at Junior High School 227.

Ms. Abbey has been a teacher at J.H.S. 227 since September 1967. She now holds a regular junior high school English license.

DEFENDANTS

19. DEPARTMENT OF SOCIAL SERVICES OF THE CITY OF NEW YORK is a department of the city government under its charter, and is authorized to hire and grant leave to its employees subject to the by-laws of the City of New York and of the Department of Social Services.

20. JULE SUGARMAN is the Director of the Department of Social Services.

21. THE BOARD OF EDUCATION OF THE CITY OF NEW YORK is a department of the city government which under its charter is charged with maintaining the public school system for the City. It is authorized to hire and grant leave to its employees subject to its by-laws.

22. HARVEY SCRIBNER is Chancellor of the New York City Board of Education.

23. JOHN LINDSAY is the Mayor of the City of New York.

24. Defendants are sued in their official capacity.

25. On February 22, 1971, plaintiff Monell requested maternity leave to commence March 8, 1971, from her Supervisor, Ms. Sydnor. Her request was submitted with a letter from her personal physician, stating that her expected date of delivery was April 17, 1971.

26. On February 24, 1971, plaintiff Monell was informed she must leave work on Friday, February 26, 1971, as she was already in her eighth month of pregnancy.

27. On February 25, 1971, plaintiff Monell protested the forced termination date in a memorandum to Irving Damsky, Director, Department of Personnel, Bureau of Child Welfare, Department of Social Services. In this memorandum she requested that her leave be effective March 29, 1971, and further offered to sign a waiver of liability and secure a note from her physician verifying her physical good health if permitted to continue to work. Receiving no reply to said memorandum, on February 26, 1971, Ms. Monell left work as directed.

28. On or about March 10, Ms. Monell recieved a letter from Inez Simon, Division of Personnel Relations, Department of Social Services, Bureau of Personnel Administration, re-confirming that her request to continue work until March 29, 1971, had been

denied and indicating that the denial was based on a department policy permitting staff members to work through the seventh month of pregnancy with the approval of their Bureau Physician. The letter also noted that under city-wide leave regulations pregnant employees are permitted to work only until the completion of the fifth month of pregnancy unless they receive "agency medical approval" and approval of the head of the agency by whom they are employed. [See letter, Appendix A annexed to the original complaint and made a part hereof.]

29. In January 1971, plaintiff Susan Terrall requested maternity leave to commence on April 1, 1971, from her then supervisor Ms. Vilma Alverez. Her request was accompanied by a note from her obstetrician, Dr. Leonard Elmaleh stating that she could work until April 1, 1971. In establishing the date of April 1, Dr. Elmaleh, indicated to plaintiff Terrall that there was no medical reason why she could not work as long as she wished. Plaintiff Terrall indicated whe wished to work until April 1. Plaintiff Terrall's expected date of delivery was April 22, 1971. When plaintiff Terrall was transferred from the San Juan Center to St. Anselm's School her request was transferred to her new supervisor, Murray Liebman.

30. During the second week in January 1971, plaintiff Beverly Zapata requested maternity leave to commence on April 1, 1971, from her supervisor, Murray Liebman. Her request was accompanied by a note from her obstetrician, Dr. Eulogio Jerez

stating she could work until March 15, 1971. Dr. Jerez indicated to plaintiff Zapata without further explanation that he had chosen the March 15th date for "legal" not medical reasons. The note indicated that plaintiff Zapata's expected date of delivery was April 11, 1971.

31. Plaintiffs Terralll and Zapata were told by Mr. Liebman that they must have a physical examination done by the Board of Education Physician.

32. On March 1 ,1971, they went to the Board of Education on Court Street, Brooklyn, New York, as directed. At the physical examination their blood pressure was taken, the doctor felt the size of their babies and noted the due dates indicated by their obstetricians. The Board of Education doctor then informed plaintiffs Terrall and Zapata that since they were past their seventh month of pregnancy they were supposed to stop work immediately but that they could complete the week.

33. Plaintiffs Terrall and Zapata both worked until March 5, 1971.

34. On September 10, 1971, the first day of the fall 1971 school term, plaintiff Abbey informed Jacob Gore, the principal of J.H.S. 227 that she was pregnant and would take maternity leave before the end of the term.

35. Mr. Gore stated that if Ms. Abbey were an incompetent teacher she would have been asked to leave on September 10th, but that since Ms. Abbey was not an incompetent teacher she could continue at her job.

36. On November 11, 1971 Mr. Gore asked Ms. Abbey when she expected to begin her maternity leave. Ms. Abbey informed Mr. Gore that with her physician's advice and consent, she was physically able to continue teaching until January 3, 1971 and that she wished to do so.

37. On Nobember 12, 1971 Ms. Abbey received a letter from Mr. Gore instructing her to report to the Medical Division of the Board of Education "for a consultation and/or examination".

38. On November 16 , 1971 Ms. Abbey reported to the Medical Division for á "consultation and examination", conducted by Dr. Sathmary, a Board of Education physician.

39. Dr. Sathmary informed Ms. Abbey that inasmuch as she had completed her seventh month of pregnancy she could no longer teach. She stated that it was the policy of the Board of Education that once a teacher passed her seventh month of pregnancy, maternity leave was mandatory and no exceptions could be made.

40. Dr. Sathmary took Ms. Abbey's blood pressure and felt her abdomen. She stated that Ms. Abbey was in fine health and that her condition was normal.

41. Ms. Abbey informed Dr. Sathmary that she felt fine and was desirous of continuing her teaching duties. Ms. Abbey's personal physician, Dr. Jere Faison, specializing in obstetrics and gynecology, based on his continuing and recent examination

of Ms. Abbey, approved her continuing in her teaching duties until January, 1972. This recommendation was conveyed to Dr. Sathmary.

42. Dr. Sathmary stated that the recommendations of Ms. Abbey's physician would make no difference regarding the question of Ms. Abbey's teaching beyond her seventh month because the policy of the Board of Education did not permit it. Dr. Sathmary stated that the physicians' letters were only used to verify how long a teacher has been pregnant. Dr. Sathmary told Ms. Abbey that she had to begin her leave of absence November 29, 1971.

43. Subsequent to the filing of the original complaint in this action, Title VII of the Civil Rights Act of 1964 (42USC 2000e-(a) was amended to cover municipalities, which were previously exempt. Within the statutory period therefore, all named plaintiffs duly filed a discrimination complaint with the Equal Employment Opportunity Commission. Prior to such filing plaintiffs Monell, Terrall and Zapata duly filed discrimination complaints with the New York City Commission on Human Rights. Plaintiff Abbey was advised by the City Commission that the pendency of this instant action, prevented the City Commission from assuming jurisdiction of her complaint.

44. On information and belief the policy of the BOARD OF EDUCATION requires that pregnant employees stop work at the completion of the seventh month of pregnancy.

45. On the information and belief the only exception to that policy occurs when the eighth month of pregnancy occurs during the last month of the school term. Under those circumstances the employee may work until the end of the term. On information and belief this arbitrary policy is purely for the convenience of the BOARD OF EDUCATION and in no way relates to the need of the employee.

46. The policies of defendants in arbitrarily requiring plaintiffs to stop work at the completion of their seventh month of pregnancy are in violation of plaintiff's right to liberty and property guaranteed under the Fourteenth Amendment.

47. The policies of defendants in arbitrarily requiring plaintiffs to stop work at the completion of their seventh month of pregnancy discriminate against plaintiffs on basis of their sex in that the policies are wholly without medical basis and establish arbitrary limits on the employment of pregnant women in violation of their rights under the equal protection of the laws guaranteed by the fourteenth amendment to the United States Constitution.

48. The policies of defendants in arbitrarily requiring plaintiffs to stop work at the completion of their seventh month of pregnancy violates plaintiffs' rights to have and raise a family without the imposition of unconstitutional conditions by defendants as guaranteed by the First, Ninth and Fourteenth Amendments to the United States Constitution.

49. The policies of defendants in arbitrarily requiring plainitiffs to stop work at the completion of their seventh month of pregnancy chill and deter and discourage plaintiffs in the exercise of their rights under the First, Ninth, and Fourteenth Amendments to have and raise a family.

50. Plaintiffs were arbitrarily compelled to take unpaid leaves of absence from their employment solely because of their pregnancy; such compelled leave having no relationship to their ability to satisfactorily perform their jobs.

51. In compelling plaintiffs to take such leave, defendants are arbitrarily and capriciously depriving plaintiffs of their right to bear children and remain full, active and equal members of society. The aforesaid actions of defendants acting under color of state law will deprive plaintiffs and the class they represent of their civil rights.

52. The aforesaid policies and actions of the defendants violate Title VII of the Civil Rights Act of 1964. (42 U.S.C. 2000e et seq)

53. If plaintiffs are not granted the relief they request immediate and irreparable harm will befall not only the plaintiffs, but all others who are chilled and deterred from exercising their constitutionally protected rights to have and raise a family.

54. Plaintiffs have no adequate remedy at law.

EXHIBIT 1

RELIEF

WHEREFORE, plaintiffs pray that this Court grant the follwing relief:

1. That a declaratory judgment issue declaring that the policies of defendants Department of Social Welfare and Board of Education compelling female employees to take a leave of absence at the completion of their seventh month of pregnancy are unconstitutional and in violation of:

(a) the right to earn a livelihood, to be full and active members of the society and to decide whether to have children guaranteed by the Fourteenth Amendment to the Constitution;

(b) the right to the equal protection of the laws guaranteed by the Fourteenth Amendment;

(c) the right to have and raise a family without the imposition of unconstitutional conditions guaranteed by the First, Ninth and Fourteenth Amendments.

(d) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et. seq.)

2. That an injunction issue prohibiting and enjoining defendants, their agents, employees, attorneys or any other person active on their behalf, from further enforcing the aforesaid policy requiring employees to take a leave of absence at the completion of their seventh month of pregnancy.

EXHIBIT 1

3. That an order be entered: a) Awarding plaintiffs and their class damages plus interest for the deprivation of their right to be employed, including but not limited to wages lost by reason of the discriminatory acts herein alleged and measured from the dates of those discriminatory acts.

b) Awarding plaintiffs costs and attorneys fees in the prosecution of this action.

c) Granting such other and further relief as this Court may deem just, proper and equitable.

Respectfully submitted,

Nancy Stearns by Gregory Abbey

Nancy Stearns
Oscar G. Chase
Gregory Abbey, of Counsel

c/o Center for Constitutional Rights
588 Ninth Avenue
New York, N.Y. 10036
Tel.: 262-2500
Attorneys for Plaintiffs

LETTER FROM HON. WHITMAN KNAPP TO COUNSEL

UNITED STATES DISTRICT COURT

CHAMBERS OF
JUDGE WHITMAN KNAPP
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, N. Y. 10007

June 26, 1974

Re: Communications Workers of America, etc.
v. American Telephone and Telegraph -
73 Civ. 3353 -
Women in City Government United, et al v.
The City of New York, et al - 74 Civ. 304

Dear Counsel:

In light of Geduldig v. Aiello, 42 U.S.L.W. 4905 (particularly fn. 20 at 4908), Judge Knapp will hear argument on July 11, 1974 at 9:00 A.M. in Room 1506 as to whether he should, sua sponte, dismiss the complaints in the above-captioned actions.

Any briefs you may care to submit would be welcome.

Very truly yours,

Abigail Pessen

Abigail Pessen
Law Clerk to Judge Knapp

TRANSCRIPT OF HEARING

JULY 11, 1974, ON COURT'S MOTION

TO DISMISS PLAINTIFF'S COMPLAINT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

WOMEN IN CITY GOVERNMENT UNITED, et al,

Plaintiffs,

-against-

74 Civ. 304

THE CITY OF NEW YORK, et al,

Defendants.

----------x

July 11, 1974
9:00 A.M.

B E F O R E :

HON. WHITMAN KNAPP,

District Judge.

A P P E A R A N C E S :

K. RANDLETT WALSTER, ESQ.

LINDA COLVARD DORIAN, ESQ. and
DAN C. RUPLI, ESQ.

MARY K. O'MELVENY, ESQ. and
JOHN LUBELL, ESQ.

BARBARA SCHAIN, ESQ.

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THE COURT: Ladies and gentlemen, I have read or most of your briefs and have formed certain tentative conclusions. I think maybe the most sensible way to handle this is for me to give you my tentative conclusions, which are favorable to the defendants, and let the plaintiffs try to argue me out of them.

I am exposing my thinking to you, and there is, of course, an appellate court.

Now, my tentative conclusion is, in the first place, that the Supreme Court meant Footnote No. 20 to be a significant part of its opinion and meant it to be an answer to the dissent. It is my conclusion that the Court meant Footnote 20 to be its authoritative answer to the dissent, and, therefore, it kind of takes precedence over what might be the apparent inconsistencies.

Assuming that to be correct, what is the best way to handle this particular lawsuit? Obviously, the complaint in this case was drawn on the theory, to put it in a shorthand way, that the district court in the Aiellocase was correct, and that is the theory on which this complaint is drawn.

Now, as the various plaintiffs pointed out in their briefs, there are other things in this complaint which may not be covered by Aiello, and the complaint may

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be salvageable. That being the case, my theory, my present feeling of how this lawsuit should be managed at this particular time would be to dismiss the complaint with leave to re-plead.

Of course, that wouldn't be a final order, as I understand it. Therefore, I would intend to certify pursuant to the appropriate section to the Court of Appeals. My thinking on that is as follows: I either am wrong in my interpretation of Footnote 20 in which event you get a full-fledged lawsuit exactly as you pleaded, or I am right in my impression of Footnote 20, in which event you may or may not have a mini-lawsuit. I don't characterize it as mini, except as in comparison with the other. You may or may not have a small lawsuit. There is no way of finding out which you have other than by following the procedure I have suggested.

If I do not dismiss and sustain the complaint, why, then, everybody has to go through the expense of trying the major lawsuit. If I should grant the motion with leave to re-plead and not certify the question, then you have an equally ridiculous result, because in order to get up to the Court of Appeals you have to re-plead, try the mini-lawsuit, then go up to the Court of Appeals and get permission to try the major lawsuit because I was

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wrong in my interpretation of Footnote 20. Neither of these possible procedures seem to me to make any sense.

Now, by way of laying out my prejudices, so to speak, so you can deal with them and the Court of Appeals can be aware of them, before the Supreme Court came out with this case I was of the opinion that the complaint stated a cause of action, because I was of the opinion that the district court would be affirmed. I was, frankly, reluctantly of that opinion, because it seemed to me that the case presented all kinds of problems. The Supreme Court practically saw it also. But that was my view. It was a prejudiced view.

For example, one of the problems we face is the definition of the class. You complain in various language alleging on behalf of all people who are injured by the present arrangement or potentially injured. Well, the injured ones are persons presently pregnant and not getting relief. Potentially I don't know just what that means. I suppose it means all non-pregnant women of child bearing age. But it is not that simple. Maybe a majority of those non-pregnant women of child bearing age are beneficiaries of the present system, rather than being injured by it. For all I know, the economics of the situation are such that there one pregnancy might

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not be enough to make it worthwhile to pay the additional premiums for her entire industrial life. Maybe it would be to her economic interest not to pay.

And, those are some of the reasons for my being aghast at the problem before me. I merely state them, because, obviously, you could well argue that my conviction that Footnote 20 says what it says is not so, and unless you persuade me differently, I have tentatively decided to dismiss the complaint with leave to re-plead, and setting forth the opinion as to why.

You may proceed in whatever order you people decide.

MS. O'MELVENY: On behalf of the Communications Workers of America and Esther Skipper against the American Telephone and Telegraph Company, Long Lines Department, I think at the outset since you have addressed your attention to Footnote 20 and to the possibility that the complaints in these actions were in a sense modeled after the Aiello complaint and that perhaps Aiello is, therefore, governing over these complaints, I would like to say initially that we believe that the rights guaranteed under Title 7 of the Civil Rights Act are, indeed, not discussed in Aiello. We do not make in our case an equal protection argument.

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THE COURT: In that connection, all your briefs make that point, and they point up different language in Civil Rights cases and Equal Protection cases. I have not really analyzed it. The difference is not so much as to which section, but which date it bears.

MS. O'MELVENY: Our interpretation of the Civil Rights Act grants equal employment opportunities and the standards to be employed by any Court in interpreting the rights under that act, are, indeed, different than the Equal Protection clause standards. It is particularly true, I think, when you remember that Aiello involved essentially a social welfare policy situation. It did not involve employment relationship at all. So that the standards which are normally employed under the Fourteenth Amendment, which, in essence, presume that where states and national policy legislation they do so correctly with a reasonable rational interest, those standards are not involved under Title 7 to the extent that employer policies which on their face appear to have a despairing impact upon a protective group under the Act, in this case, women, those policies are presumed not to be rational or reasonable, and therefore, the statute calls upon the employer to engage in a substantially different type of justification.

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THE COURT: I read Footnote 20 as saying you are not a protected group.

MS. O'MELVENY: That is certainly the argument, what Footnote 20 says. And, the question is the disparate impact which this particular classification has upon a whole facet of the employment relationship which was not involved in Aiello.

In Aiello we are talking about loss of income protection benefits-and that is all. Women were employed by hundreds of employers throughout the state of California. Their job status was unaffected by the particular state disability insurance plan involved in Aiello.

In this case the employees of the defendant, in addition to losing income protection benefits, find themselves subject to loss of seniority.

THE COURT: But they are not a protected group. I grant you, in the Aiello case the thing is more direct. I mean, the non-pregnant woman pays a premium for the benefit of the pregnant woman. That is very direct. It is less direct in this case. But it seems to me it boils down essentially to the same thing.

American Telephone and Telegraph in a union bargaining session is ready to give up X million dollars, and I don't suppose that American Telephone and Telegraph

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cares whether it goes to pregnant or single women or where it goes, as long as the union is willing to produce the employees to work at a package of X million dollars for the year.

American Telephone and Telegraph is happy. Then the negotiations between the union and American Telephone and Telegraph spreads that X million of dollars around among pregnant women and non-pregnant women. And, so, really the same results happened. Anything that goes to pregnant women is taken away from somebody else.

So it is not as direct or clear, but it seems to me the same principle applies.

MS. O'MELVENY: It seems to me that the problem with that argument is that in any situation where an employer is spreading around a certain amount of money for fringe benefits it can't spread it around in such a way and a definable group of people suffer.

THE COURT: The Supreme Court seems to me to have said this particular group is not a sex-determined group.

MS. O'MELVENY: The particular group involved in Aiello might not be, but, they certainly didn't say ever.

THE COURT: They certainly didn't say that

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you can't have a mini-lawsuit.

MS. O'MELVENY: In addition, they said that legislators are free to decide whether to include or exclude pregnancy in certain situations.

THE COURT: The Footnote says it is not a sex-determined group. That is the way I read it, and I can be wrong.

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(Continued on Page 10)

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MS. O'MELVENY: Well, the case says that absence is showing that where the distinctions based on pregnancy have a -- are a pretext for a --

THE COURT: Yes, that is my theory of your mini-lawsuit. My theory is that on this complaint you could have a lawsuit to show that this was a pretext. That's an entirely different lawsuit than you had in mind when you came, and it's an entirely different lawsuit all together, and my feeling is that in no way, no economical way of protecting -- if I deny this motion, you go to trial, you are going to have to prove your whole case, because you may be entitled to your whole case, and it is going to be awfully difficult; whereas if I am right and the Court of Appeals affirms me and the Supreme Court either affirms or denies certiorari, then you have got a small case to prove, and you have got to prove the pretext, and you have got to prove these other things; and it seems to me that is a much more sensible way to proceed.

MS. O'MELVENY: I might say though that certainly our position is that this language which says that although not every legislative classification based on sex is necessarily sex discrimination --

THE COURT: Don't get me wrong, that I think

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I am necessarily right. I think I am right, but I am certainly not saying that your position is unreasonable, and I am not saying I am altogether confident it won't turn out to be right, but looking at it as judicial housekeeping, I don't see how you lose by going up and having the Court of Appeals tell me I am wrong, and the Supreme Court denying certiorari on that, or the Court of Appeals telling me I am right and the Supreme Court granting certiorari and telling me to go back to law school.

But I don't see really how you lose by having the decision made before everybody is put to trying the major lawsuit.

MS. O'MELVENY: Well, obviously, I mean, we would believe that the time involved in taking it all the way up would certainly be --

THE COURT: I would certainly think you are --

MS. O'MELVENY: You have a number of women who are constantly affected by these policies on a daily basis.

THE COURT: But you certainly get to the Court of Appeals by October.

MS. O'MELVENY: Frankly, I hope to be trying at least one of these cases by October.

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THE COURT: You are not going to try it before me by October. I will tell you that.

MS. O'MELVENY: All right. I would like to just go back for a minute to the question, if the Court finds that not every legislative classification concerning pregnancy is neither sexual discrimination, it's naturally recognizing that some of them are, and we believe that some of them are those which fall under the mandate of Title 7 and arise in the employment context, and we believe that therefore the Court must look to the kinds of inquiries that are appropriate under Title 7, and the kind of inquiry we believe Congress intended to be applied under Title 7 is exactly what is involved in this case, and that is, here is a definition or a classification which has an impact on a particular protected group.

THE COURT: Well, that is the problem.

MS. O'MELVENY: You're right.

THE COURT: Whether it's a particular protected group.

MS. O'MELVENY: The real question though, it seems to me, is that if the Supreme Court had intended to have this case apply to Title 7 rights and to employment relationships, they certainly would have said so.

There is no question, for example, in the

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defendants' brief, in our case, they make the point that all the amicus that participated before the Supreme Court in Aiello urged it to make a finding on Title 7.

THE COURT: You may just well argue that with all these amici there, and if the Court had bent the opposite, they would have said the opposite.

MS. O'MELVENY: But I don't -- in the context of the Court saying that the lawmakers are free to do what they want on this issue, that in some context they may exclude pregnancy and in other context they may include the pregnancy, I think they are specifically saying that certainly a statute of Congress may very well not --

THE COURT: Yes, but you said if they wanted to cover Title 7 they would have said they were covering Title 7.

MS. O'MELVENY: And they did not want to make such a broad --

THE COURT: Equally arguable is that if they wanted to prevent district judges like me from falling into error, they just would say, "We don't include Title 7."

It seems to me that cuts both ways.

MS. O'MELVENY: I must say we are of the distinct belief that the Court would have said something

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about, particularly in the context of the language that says that lawmakers are constitutionally free to decide how to treat pregnancy.

THE COURT: That is what they were talking about. They were talking about lawmakers.

MS. O'MELVENY: And we believe they were deciding that whatever this case says in the social welfare context, it has no application to a congressional statute in the area of employment, and it certainly has no impact where the employment relationship is critically affected by a policy which Congress has said it not permissible.

Sex discrimination in its broadest form is not permissible, and Congress in enacting Title 7 realized that there are hosts of discriminatory policies that don't even appear on the surface to be discriminatory, that you perhaps have to recognize all the subtleties of employment discrimination, and what I must say I believe is an essential part of their legislative function, they said, "We are so concerned about sex discrimination in -- or about discrimination in employment, we can't even articulate every single kind there is, so we are going to delegate to an agency the power to investigate every employer and their policies and their impact on these protected groups, and determine which kindsof

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practices are indeed discriminatory, and that will be all encompassed in our very broad mandate prohibiting employment discrimination."

Now, of course, the EEOC is here, and I don't really want to take away from their argument about their interpretative powers and fact-finding powers, but I really think it's very important to stress the fact that Congress' ban on sex discrimination is extremely broad, and it is our contention thatit is so broad that once its administrative factfinder has investigated the disparity a particular policy involving pregnancy has on women, then those policies are proscribed by Title 7.

THE COURT: Where we part company is, I think the Court has said this isn't sex discrimination. I may be wrong about that.

MS. O'MELVENY: Again, I have to go to the language that says that --

THE COURT: Yes.

MS. O'MELVENY: -- in some cases it isn't, but in other cases it is.

THE COURT: I think what you are saying there is anything which is used as a device for sex discrimination, and you can prove it, is unlawfull. Therefore, I think you do have a mini-lawsuit here if you

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can show it was used as a device for sex discrimination, but that is not the theory on which you came to court, and it is certainly not the theory on which you would be entitled to recover if I am wrong on this interpretation.

Let me put to you a kind of absurd situation by way of illustration. Suppose there was a union of all women, actresses is the only thing I can think of at the moment, but supposing there was a union of all women, and it negotiated this contract.

Would you say that was sex discrimination, that having decided that its membership would rather pay for its pregnancy and get lower premiums than have pregnancy taken care of ?

MS. O'MELVENY: Well, I guess the analogous argument is a question of whether there is a -- I don't know. I must say that it seems to me that it would depend upon the type of women that were affected by that, you know. I think there would be a number of inquiries that would be called for. One would be economic factors involved in the women that were excluded and not excluded.

Perhaps, you know, minority composition would be involved.

I must say I don't know how to answer that because I think that --

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THE COURT: I didn't think you would.

MS. O'MELVENY: The sub-class argument which you know, we think is certainly applicable in our situation --

THE COURT: If you could show that this affected just one race or another, you would be in a different ball game.

MS. O'MELVENY: Right. I must say I do not know how to -- it's not something we have ever considered, frankly, because we would assume that there would be no such constitutional permissible --

THE COURT: The question was suggested by the last sentence in Footnote 20.

MS. O'MELVENY: I should know this by heart, but I will have to refer to it.

No, I think it is not. I must say that the problem with the last sentence in Footnote 20 is that that is the sub-class argument. You don't have to have a policy which affects every single woman, but you certainly will have a prohibited policy if it affects a particular identifiable group of women.

I think that is what Phillips against Martin Marietta was about. It wasn't every woman who was denied employment. It was simply those women who had pre-school children.

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THE COURT: Yes, but of course in that case -- I have difficulty squaring that case with this footnote also, but in that case you had a situation where a man similarly situated and a woman got different treatment, so you had a clear -- whatever else you could say about the case, that was there. It was the same way with the stewardesses.

MS. O'MELVENY: In Sprogis though, the argument was certainly made that the job was unique. That men didn't hold the job anyway, so that you couldn't -- you really were not denying a benefit to --

THE COURT: Which one is that, the stewardesses?

MS. O'MELVENY: That is the stewardesses, United Airlines. That is the case in which a woman who married had to leave, and the argument was made and rejected, I think very clearly, that --

THE COURT: Well, it was rejected on the ground it wasn't permitted to be unique.

MS. O'MELVENY: I must say though that I think the manner in which the Court is discussing this is definitely in the sub-class context, and I think they really have just overlooked, again, because the Title 7 cases are so different from the Equal Protection cases, I think they have just overlooked under Title 7 the sub-

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class issue.

I might say that we certainl urge the Court, if it intends to certify the question, to certify it in terms of a denial of the motion to dismiss rather than in terms of grantingit, and we do believe that Title 7 --

THE COURT: That won't work because I really think -- I am in doubt, but I have got to decide what I think the law is, and I can't play games with the Court. I am in doubt as to whether I correctly interpret the footnote, but I have come to the conclusion that I do. I can't decide something I don't think is right just because it would be a better vehicle for going up.

MS. O'MELVENY: I might say that --

THE COURT: Although if I didn't think it was a good vehicle, I might deny the motion on the ground I am in doubt. That I could do.

MS. O'MELVENY: Well, we indeed just will close by noting we believe Footnote 20 supports our presence in court on the Title 7 claim in its broadest sense, and not on the mini-claim, although we do believe, of course, we could prove the discrimination argument. It is our belief that in Footnote 20 Congress has carved out this area, and the Court has said that Congress may do it, and the Court has recognized that Title 7 will be

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a different case all together.

THE COURT: Thank you.

MS. DORIAN: Your Honor, my name is Linda Dorian, and I am here on behalf of the United States Equal Employment Opportunity Commission. We take a more optimistic view, and we think that you should deny your own motion, and I would like first, your Honor, before going into my argument, to try to respond to some of the questions that you raised with plaintiffs' counsel in this case.

One of the questions that you raised is in terms of a racial impact, and if there were an employment policy in a benefits plan that had a racial impact, how would that be viewed under Title 7.

In a racial impact, it would be viewed just as it is in a sexual discriminatory impact. That is, the test under Title 7 is not rational basis, but whether there is a differentiation upon one of the Title 7 protected categories. Once an employment policy, be it hiring or job assignment or terms and conditions of employment, which clearly benefits plans are of a differential impact on a protected class, the very limited Title 7 defenses are called into play.

This is the crucial distinction between this

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case that we are here on today and the Aiello decision which is brought under the Fourteenth Amendment.

For instance, your Honor, if an employer had a disability benefits plan that covered virtually every disability and excluded, for instance, Tay-Sachs disease, which is primarily experienced by Eastern European Jews, you would have a prima facie Title 7 violation. The burden then shifts to the company to justify under the stringent Title 7 standards its policy.

Similarly, if you had an employment policy of eliminating from coverage under a disability benefits plan sickle-cell anemia, which we recognize to be experienced primarily by blacks, in our society, this would be prima facie race discrimination under the Act, and then the burden shifts to the employer to defend.

We would suggest too that on this issue of disability benefits and the pregnancy area, obviously after the Aiello decision is recognized as a novel theory under Title 7. Title 7 is a new statute, and that motions to dismiss have traditionally been disfavored when the theory of recovery is novel, and the statute being enforced is new when the Courts have deemed it appropriate to decide the case on the basis of proof adduced on trial.

THE COURT: Develop that point because that,

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I think, is crucial here. How would the proof in any way help the Court of Appeals or the Supreme Court to tell me whether they think the basic question here is, as you have said, the mere fact of pregnancy discrimination just because it's women and obviously not men, that the mere fact in and of itself is enough to state a cause of action.

MS. DORIAN: Prima facie because of, your Honor, under Title 7, yes.

THE COURT: I read the section to say no. If I am right as to that, that Footnote 20 says no, we have an entirely different lawsuit here.

MS. DORIAN: Surely, you do not have a lawsuit in the sense that you do not have a prima facie --

THE COURT: No, you have an entirely different lawsuit.

MS. DORIAN: And you have to prove invidiousness and intent to discriminate.

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THE COURT: Yes.

MS. DORIAN: I understand that. Your Honor, I would like to explain how we interpret Footnote 20, and it is crucial to bear in mind here that Title 7 is a different statute. It is not the Fourteenth Amendment, and the standards are totally different. For instance,

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we interpret Footnote 20 to be a recognition that there is a sexually different impact, but under the Fourteenth Amendment they refer to it. They say it's not a sex classification such as those in Reed versus Reed and Frontiero versus Richardson.

In those sex classifications the Supreme Court did not apply the traditional rational basis standard that they apply here. They rather applied in Reed a close scrutiny standard, which is an intermediate standard, and in Frontiero the suspect classification standard.

We submit to you that what is required under Title 7 is not that an employer have a mere rational basis for his policy. All you have to show is a differential impact upon a protected Title 7 class, and surely women are, and you have a prima facie violation.

Then this calls into operation Title 7 analysis under Title 7 defenses. The kind of equal protection analysis that exists in Aiello is wholly distinguishable, and I would like to just devote a little time to that.

For instance, Aiello relies for precedent on social welfare cases. They rely on no rational basis Fourteenth Amendment cases in sex discrimination, and there are plenty of them. Rather, they view this as

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a social welfare plan and accord a great deal of deference to the state as the legislature appropriately considering the multiplicity of variables in this complex areas in terms of selecting risk, how benefits would be covered, and so on.

It does not arise in the employment context and the employer under Title 7 is not accorded rights in selecting risks for coverage in employment policy. If he selects risks and then disallows other risks that have a desparate impact on Title 7 category, a violation occurs and Title 7 is in operation. This is not the case under the Fourteenth Amendment. It's not the case in a rational basis standard.

You mentioned earlier, your Honor, that in reading the different language in the Title 7 cases, that it's rather a difference in the dates and so on, rather than a real difference in the standard, but we submit to you that this is definitely not the case, and I would like to develop that a little bit.

Under Title 7, once this prima facie violation in determining a desparate impact occurs, again, it's not like in Aiello. It doesn't have to be invidious in the sense that an employer has evil intent. Indeed, the courts have held in the United States Paper Makers case

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that all you have to show is that the employer's act was not accidental. You have to show no evil motive, but employer of good faith is not a defense to a Title 7 violation. The defenses are extremely limited and have been very narrowly interpreted by the courts.

The only statutory defense recognized is the 703E Bonafide Occupational Qualification Defense. That is not available in this case, and I would like to explain why it is not.

The BFOQ defense is a statutory defense of sex determination in hiring and goes merely to hiring and job assignment. Furthermore, it has been interpreted by the Fifth Circuit and the Ninth Circuit. The Fifth Circuit in Weeks versus Belto said that the employer must make a hiring and job decision assignment on a reasonable basis, and that is a reasonable factual basis to believe all or substantially all women are unable to perform this job. Clearly that is not an issue here when we are not talking about one's qualifying to perform a job.

The Ninth Circuit has fashioned an even more stringent test, which means that every individual woman must be given a chance to prove her qualification, even

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if all or substantially all of them are unable to.

THE COURT: That all assumes you have got a prohibited segment, but I read the last paragraph of Footnote 20 to say we haven't got one.

MS. DORIAN: You do not have invidious discrimination under the Fourteenth Amendment. I would fully concede that that is what they mean.

THE COURT: The last paragraph says the lack of identity between the excluded disability in gender as such --

MS. DORIAN: As such.

THE COURT: -- becomes clear in the most cursory analysis. The act divides potential recipients into two groups, pregnant women and non-pregnant women. While the first group is exclusively female, the second includes members of both sexes. Financial and actuarial benefits accrue to members of both sexes.

MS. DORIAN: Your Honor, I think this is fully illustrative of why Aiello does not bear on our case. For instance, you know that they say gender discrimination as such, as we interpret that to mean that the kind of invidious discrimination that calls into operation the closer constitutional standards articulated by Reed and Frontiero, not the merely rational basis

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standard applicable in the social welfare context.

By using that as such addendum to that, we ecognize that there is a differential sexual impact.

THE COURT: There is no word like "as such" in this paragraph. The last paragraph of that footnote--

MS. DORIAN: In terms of the recipients being in two groups. I think again that is illustrative of why this case is different under Title 7 than under the Fourteenth Amendment, because under the Fourteenth Amendment traditionally you can have a sub-class discrimination, but if you do not have a broad class discrimination, it will not be deemed a violation of a rational basis standard.

This is not the way the law has been developed under Title 7. For instance, in the Phillips versus Martin Marietta case, the fact that you hire even the vast majority of your employees -- I believe that the facts in Phillips that some 78 percent --

THE COURT: That's right.

MS. DORIAN: -- of the company's employees were female, that was not enough to rebut the inference of discrimination when you select out a sub-class of women for different treatment.

Your Honor raised the point that in that

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instance that you have directly comparable men, that if you have mothers of pre-school age children, you have fathers of pre-school age children. We suggest to you that a woman disabled by pregnancy in the employment context has her male counterpart in the form of a man disabled by any other cause.

The fact that pregnancy is experienced only by females, the same as Tay-Sachs disease being experienced by Jews or sickle-cell anemia only by blacks, or prostatectomies only by men, does not single that out for exclusion, and to single it out when it has a desparate impact upon a Title 7 protected category that Congress in its legislation broadly checked discrimination against, gives rise to a Title 7 violation, and then it's a different standard.

In the Equal Protection case, you may have to show invidiousness or lack or rational basis.

THE COURT: What could you do with my union of women only that would negctiate one of these contracts?

MS. DORIAN: I would like to speak to that, your Honor.

First of all, your Honor, the court's have recognized that the union and employer cannot through collective bargaining agreements and through their own

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negotiations sacrifice an individual's Title 7 rights.

THE COURT: Would this be a sexual discrimination?

MS. DORIAN: Is that an exclusively female union?

THE COURT: The allocation of benefits among women, would that be a sexual discrimination?

MS. DORIAN: It's an exclusively female union, no male membership?

THE COURT: Right. We have got X thousand dollars or million to divide among X thousand women or million women, however many you want, and we decide to favor the pregnant against the non-pregnant or the non-pregnant as against the pregnant. Are we discriminating on grounds of sex in that situation?

MS. DORIAN: You would be discriminating against the women who do not bear children.

THE COURT: As opposed to the women who do. Is the discrimination based on sex or is it discrimination based on our desire to increase or lower the population or whatever?

MS. DORIAN: Well, I would wonder if that might not give rise to an unfair labor practice.

THE COURT: It might, but is it discrimination

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on grounds of sex?

MS. DORIAN: I don't think that would be discrimination on grounds of sex.

THE COURT: It also might make it impossible to run for office if you are involved in [illegible].

MS. DORIAN: That is quite true, but we are not faced here with an all-female situation.

THE COURT: But this last paragraph seems to me to raise this kind of feeling in the Court, that the Court seemed to me to be impressed with the fact that the women might just as much want this as men, this deal.

MS. DORIAN: Well, your Honor, I'd like to say a couple of things about that. First of all, if it's a Title 7 violation, it doesn't matter what the union wants.

THE COURT: I understand that.

MS. DORIAN: Or what the employer wants.

THE COURT: But I think my feeling of Title 7 and what comes out of the court decision is Title 7 doesn't try to protect one woman against the other. It tries to protect women against men.

MS. DORIAN: That's correct, and the women need the protection against men, and that is why Title 7 was passed.

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THE COURT: As I read the Court's decision they say in this case it's not women against men, it's women against other women, among other things.

MS. DORIAN: But that is the sub-class distinction, your Honor, that has traditionally been upheld under the Fourteenth Amendment as having a rational basis but has traditionally been struck down under Title 7.

THE COURT: Once you get to the fact that youare discriminating, then you're --

MS. DORIAN: Title 7 is, once you get to the fact of that, there is a desparate impact on a protected class. Discrimination is perhaps a more useful term in the Fourteenth Amendment context because it makes you think of intent and invidiousness and those other factors, but those other factors have no meaning in a Title 7 context. Intent is irrelevant to the violation. Good faith is irrelevant. All you have to show is desparate impact, and then you have a prima facie case, and the burden shifts to the employer to justify it.

And I submit that the defense that the employer would have to come forward with here is a business necessity defense, which has been very narrowly interpreted by the courts, and the business necessity defense that they

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would want to prove, I assume, would be costliness, and I would like to say that a number of courts have recognized that cost in and of itself will not constitute a business necessity defense under Title 7.

Judge Merhige in the decision down below, Gilbert versus General Electric, on this decision under Title 7 now on appeal to the Fourth Circuit, reasoned, speaking to this point, that even if you could prove that there was a marginally greater benefit to women, and that they got more benefits than their male counterparts, that this is the price that Title 7 exacts in the employment context if you want to make employment equality in full terms and conditions of employment a reality for women.

THE COURT: Now I think I remember that.

MS. DORIAN: We remain of that same opinion, because we think the Fourteenth Amendment is a different standard.

THE COURT: Address yourself to the other question. How would you be any more able to make these arguments you have just made now, if I adhere to my present view, that you will make to the Court of Appeals and the Supreme Court, if you get there? How would you

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to me that is the question that we ought to get decided now.

The cases, I grant you, say you shouldn't decide these cases on pleadings because the Court should have the benefit of a full record, but this seems to me to be an exception. I don't see how a full record would help the Court one bit in deciding whether pregnancy is a protected class, which seems to me the Supreme Court says it is not. If it is not a protected class, then anything I grant you, any method of discriminating against women, no matter how subtle, if it has to do with hair, if it has to do with anything you want, if its purpose and effect is to discriminate against women, you have a lawsuit; but that is not the theory under which this lawsuit was started, and it is not the theory on which it will be tried if I am wrong in my interpretation, and my question is, how is the Court of Appeals or myself or the Supreme Court in any better position to decide that basic question on a full record than it is now?

MS. DORIAN: Well, your Honor, first of all, we would like to have a favorable ruling going up rather than an adverse ruling.

THE COURT: I am talking about the Court, not you.

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MS.DORIAN: That's correct. Well, I can see your point on that, your Honor, but we do think too that perhaps you are mis-reading that classification on pregnancy not being discrimination.

B5 THE COURT: I agree I may mis-read that. That is the issue: Do I or do I not? I have come to the conclusion -- I may still be talked out of it -- that that is what the Court meant, and your colleagues argue that they would have said differently if they had meant what they said to me cut the otherway. With all the amicus briefs before them and realizing that everyone was looking for this decision, I can't believe they would put this last paragraph in there without some qualification if they had meant a qualification.

MS. DORIAN: Your Honor, I differ with you about that and I would like to give an illustration of that.

I think, for one thing, that it would be inappropriate for them to refer to Title 7 in this opinion, because a Title 7 action would not lie in this case. The state of California --

THE COURT: It certainly would have been appropriate for them to say, "Make no mistake, we are not talking about Title 7, and all of this language looks

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as if it might cover the same thing. We don't intend it to be that."

That would have been very easy.

MS. DORIAN: But Title 7 was addressed to the employment classification, and the State of California was not an employer, and in a Fourteenth Amendment case on forced maternity leave, the Court did in a footnote refer to Title 7 and say that they would express no opinion as to what results would obtain under Title 7, but that was appropriate in this case, because the 1972 amendments to Title 7 extended coverage to the state as an employer. That was an employment case. I think it is inappropriate in a social welfare case where under any circumstances the State of California would not have been liable under Title 7. It was not an employer.

THE COURT: All right.

MS. DORIAN: That would be my interpretation of that, and I would suggest to the Court too that, of course, and I am sure you are aware that we are participating on this issue, the Equal Employment Opportunity Commission is on our own behalf and has amicus in numerous district court cases. We have this issue on appeal now, with favorable decisions in two district courts on appeal now in the Third Circuit and the Fourth Circuit.

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THE COURT: You would have had another district court favorable if it hadn't been for this decision.

MS. DORIAN: Right, right, but in the Fourth Circuit, at least the case went to trial, and there was a full development of proof, and we would just submit that is the appropriate way for this case to be resolved, development of proof on the record.

THE COURT: But you can't give me any reason for it except generally -- I mean I agree with you that it's a generally accepted federal rule, but it seems to me in this case it's an exception, because it seems to me a simple question of whether there is a protected class, and that is a discrete question which is going to affect this entire lawsuit, going to affect everything that is done in it, and it seems to me you don't need any development of evidence to decide that question: Did the Supreme Court mean what I think it means or did it mean what you think it means?

It seems to me that is a question that can be decided first by the Court of Appeals on the present record and --

MS. DORIAN: I understand your Honor's concern --

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THE COURT: And next take it on appeal and get it decided, and if they did that, you would be in the Supreme Court by October.

MS. DORIAN: I understand your Honor's concern. I guess at the Commission we just feel very convinced that Title 7 is --

THE COURT: You mean you are convinced that I am wrong?

MS. DORIAN: Yes, sir.

THE COURT: That is what you are paid for.

MS. DORIAN: That's right. But we are concerned with conviction and not on the basis of salary or anything like that, and, your Honor, we would point out to the Court that the lines adopted by the Commission and reflecting, we think, our expertise in agency directed to the field of sex discrimination, carrying out Congress' mandate which was enacted in 1972 after fully a year after a report of the Equal Employment Opportunity Commission went to Congress informing them that we perceive that pregnancy related disability on denial of employment benefits on that basis violated Title 7.

Congress did not in its 1972 amendments cut back and say sex discrimination in Title 7 is operative only for the woman who choses to forego her fundamental

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right to bear children. In fact, Courts have expressed a judicial outrage at the notion of employers who have aggested that this is mandated by Title 7 and a choice to elect to bear children means you give up certain employment rights.

So we also expressed concern, your Honor, because we perceived at the ultimate ramifications of any judicial perception that the different treatment of women in employment on the basis of pregnancy could have disasterous repercussions.

For instance, how can we say that pregnancy is different for the purposes of disability benefits, but the woman who takes pregnancy leave is comparable to the male counterpart for purposes of reinstatement in seniority?

We fear that the encroachment in this field of a mandate for absolute equality ultimately subjects working women to a range of discrimination in hiring decisions on the basis of their childbearing potential, on leave decisions, on the basis that pregnancy is different and somehow merits different treatment, perhaps not guaranteed job reinstatement, and perhaps not full seniority; and we fear that any sort of cutting back on Congress' demand for full equality for women in the work place could

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have disasterous repercussions for the segment of our society that are already more economically burdened than any other protected class, even minorities.

THE COURT: That would be an argument for reading this footnote differently than it seems to me it reads. That would be an argument --

MS. DORIAN: We read that differently.

THE COURT: It would be an argument for a Court telling me that I shouldn't read it that way, and if, after certiorari is denied, if I grant the motion, and if certiorari is to be denied, and we can forget about what the future development of the law in any other area may be, we have the law of the case in this case, and we can proceed.

On the other hand, if the opposite happens, we still have a lawsuit but it's an entirely different lawsuit, and if I should grant the motion and it should be affirmed, you still have a lawsuit, but it's entirely different.

MS. DORIAN: We understand your Honor's characterization. We would just submit that our reading of the opinion is accurate, and we would hope that you would adopt it.

THE COURT: Thank you.

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MS. WALSTER: Your Honor, I would like to go back to the Footnote 20 again or stay with it, I guess. I think it's important to read the footnote very, very carefully, because obviously it's critical to this case, and the language --

THE COURT: As I read the footnote, it is kind of an amended opinion. As I see what happened, they had their opinion written, then they got confronted with a dissent, and Footnote 20 is, "Well, this is really the basis of our decision." That is the way I see the structure of it.

MS. WALSTER: I think you are correct in assuming that the footnote addresses itself to the dissent, but I don't think it has any application at all to Title 7.

There is not one Title 7 case cited by the dissent, and their only reference to Title 7 is in terms of justification of standards of proof and the guidelines and apply them by analogy, so just preliminarily, I don't think that either the dissent or the footnotes' reference to the dissent deals with Title 7 at all.

The way I read Footnote 20, and especially this language that starts in the center of the first paragraph --

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THE COURT: "While it is true?"

MS. WALSTER: Yes, "While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification."

Then in the last paragraph, referring to 4, the lack of identity between excluded disability and gender as such under this insurance program becomes clear.

THE COURT: You see, the Court didn't say it doesn't follow that every legislative classification concerning pregnancy though sex-based is prohibited to the states. It says is a sex-based classification. All this argument --

MS. WALSTER: That's right.

THE COURT: That has been made about the power of Congress to make classifications which the employer doesn't have --

MS. WALSTER: I think it's important for us to make sure we are using the same words here, and when I use classification, I mean explicit classification on the basis of sex. I am not going to talk about discrimination because I think that confuses the issue.

I think what the Court here is saying is that

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in an equal protection challenge under the Fourteenth Amendment, where an attack is made on the social welfare scheme which the state in its wisdom has cited to adopt, that you have to show one of two things in order to raise a colorable sex claim: You either have to show intent or you have to show explicit classification. That is what they have said.

They go on . They distinguish their case from Frontiero and Reed because in those cases there was explicit classification, and they say on the other hand there is another way to show sex classification in this legislative social welfare area, and that is by intent, but we don't have a social welfare case here. We have nothing like one.

I agree with the position of the attorneys for AT&T and the EEOC regarding the difference between Title 7, of course, and the Fourteenth Amendment. I think it is also very important to realize though that this language doesn't say that classifications on the basis of sex in equal protection cases are always going to be all right either.

If you look, for instance --

THE COURT: It says the contrary.

MS. WALSTER: Right. In the memorandum

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which I submitted, there is an initial discussion of the transition basically in the equal protection standards over the last few years, and there is a very extensive article on that written by Professor Gunther, 86 Harvard Law Review.

He says that there is a very strong trend now in equal protection analysis under the Supreme Court decisions which show that they aren't looking for talismans, such as suspect classification, non-suspect classification. Instead, they look at all the factors that are presented by a particular case.

Those happen to be, if you look at the relevant decisions on equal protection claims in employment and with respect to pregnancy, those criteria are whether the policy was adopted by a legislature or an employer, whether it was explicit or not, and whether there were extensive social policy justifications which would have supported it.

If you look, for instance, at the variation in tests, and they are developing in terms of gradations now, not in terms of compelling interest and minimum rational basis, instead, the Court really looks to try to find out what is the reason here, and it doesn't make sense. That is what they did in Reed against Reed.

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That is what they did even in Aiello, I think, more than they have in the past.

But starting with the highest notions, that is, what we are accustomed to calling the compelling state interest test, if you look at a case like -- well, the explicit race classification cases -- or Truax, which was classification on the basis of national origin, explicit, which was adopted by a legislature in the employment context, that seems to be about the worst.

From there, depending upon how you vary these factors, the tests change, so that going down, if you get into, for instance, Chance against the Board of Education, which is a Supreme Court case but was a Fourteenth Amendment challenge to discriminatory hiring here in the Second Circuit, you have impact; that is, they had a discriminatory test, you had it being applied by an employer though it was the state.

So you see the distinctions between the Truax case and Chance, and it was in the employment context.

There they said, "Well, we think you ought to apply standards something like Title 7, that is, a very strong justification." And they didn't reach the compelling state interest test, but they did move in that direction.

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Going further down with Reed against Reed, where you have an explicit classification but it's by a legislature, and it's not in a particularly significant area, the right of a woman to be an administrator of the state isn't like voting rights, employment rights, and very fundamental constitutional issues.

In that case they said, "We are going to require a fair and a substantial interest."

Then you go all the way down to Aiello, and you find rational relationship where you have only impact, that is, you don't have an explicit classification on the basis of sex , you have a classification which, though certainly does have an impact, you have it adopted by the legislature and in a social welfare scheme.

I think this means that if you vary any of the factors in Aiello, you are going to come up with a different test, and if you transform Aiello or transfer it into the employment context, you have got to have a stronger standard than the rational relationship.

I think that if you look at the equal protection claims on the basis of sex, as those have come up very recently, that is, Frontiero, Lefieur, Reed, and Aiello, you will see the same sort of transaction.

Lefieur was disputed on due process grounds,

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but in Reed the decision is pretty clear that they are barely concerned with equal protection standards. T hey talk about the justification standards. They accept the state's policy findings. They inquire about whether or not they really make sense in the context of the case. So I think it's fair to throw that in with the rest of these.

So start with Frontiero. There you have an eplicit classification on the basis of sex again, but it was adopted by a legislature, and it was in the employment context.

Four of the justices said in, "In that context, we require compelling state interest."

In Lefieur, you didn't have classification eplicitly on the basis of sex. Instead you have what we have here.

THE COURT: Which is that case?

MS. WALSTER: Lefieur is the one which decided thatthe mandatory leave policy wouldn't withstand due process and protection. There you have a classification on the basis of pregnancy, but it's by an employer, not a legislature, and it involves a serious fundamental right, the right to bear children and the right to employment.

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The Court there in its discussion of equal protection aspect of the case said that there hadn't been any showing that they couldn't accomplish their legitimate purposes by some alternative means, which is, you know, a higher standard than what we are accustomed at the lowest classifications.

In Reed, as I said before, you have an explicit classification but by a legislature, and in a lower case; and finally, Aiello, at the very bottom of the letter, where you have all the things that would go against somebody, a non-explicit classification, a legislative policy decision, and a social welfare program.

Well, you apply pretty low standards. None of that applies here.

So that however you read Aiello, it doesn't have any bearing on the standards you apply for an equal protection claim in this kind of case, and if it doesn't have any bearing on the standards you apply in the protection case, it has absolutely nothing to do with Title 7, has no relationship at all.

Title 7 is totally different. Title 7 is a comprehensive statute enacted by Congress.

In a decision in Griggs, they go through the kinds of tests which are required to meet the problem

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which comes up when there is a disparate impact on an identifiable group. Here, under Title 7, we certainly have that kind of claim. You have a classification which isn't on the basis of sex on its face, but the only people it can affect are women.

That being the case, the employer must come forward with some justification for it.

Under the facts of my case, I am in a particularly disadvantaged position in terms of the ruling which you propose to make. Four of the defendants in this case haven't even answered. I haven't had an opportunity to go through any discovery. Nobody has.

THE COURT: How would it affect your problem? How could you make the argument any less effectively after all kinds of discovery in the world?

MS. WALSTER: Because I think that they must at a minimum, no matter how you read Aiello, give some kind of reason for what they have done, and I think that the Second Circuit --

THE COURT: Not if I read Aiello as saying it's not a protected group.

MS. WALSTER: Oh, yes, even if you read Aiello like that.

THE COURT: Why ?

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MS. WALSTER: Because then you are suggesting one, that the classification can be wholly arbitrary, that they have to give no reason at all.

THE COURT: No, no, if they use anything, if they use hair color, if they use preference for Sundays as opposed to Thursdays or anything in order to get at any group, then you have got a different lawsuit.

MS. WALSTER: Right, I understand.

THE COURT: But this lawsuit is brought on the theory, on the pre-Aiello theory that the mere discrimination against pregnant women as such was it, and that is all you have to prove.

That is the theory I would have tried the case on. Maybe it is the theory I will ultimately try the case on if I prove to be wrong, but it is not the theory that seems to me to be called for by this footnote.

The question I am asking you is, how would you be helped, and I concede I can be wrong, that is as clear as the nose on your face, but how could you be helped in showing the Court of Appeals or the Supreme Court that I was wrong by all the depositions in the world?

It seems to me it is a question of what does this language mean. Does it mean that you have got a

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prima facie case by proving pregnancy is a discrimination, or doesn't it mean that? If it means that, we have got our original lawsuit. If it doesn't mean that, you have got to re-plead, not technically, but maybe you prefer to go on the present complaint, but I wouldn't think so.

If it doesn't mean that, if it means what I seem to think it means, then you have still got a lawsuit, but it's an entirely different lawsuit.

I am asking you, how are you helped, how are you in any way prejudiced in making your argument to the Court of Appeals and the Supreme Court, a perfectly persuasive argument perhaps, and maybe successful, that this Footnote 20 doesn't mean what I think it means at all, it means what you think it means?

How are you helped in making that argument by six months of depositions?

MS. WALSTER: In Aiello, the Supreme Court relied, as you are well aware, on three very important justifications.

THE COURT: I know, but I am asking --

MS. WALSTER: What I am saying is that the position is that in the posture of this case we have absolutely no reasons on the part of the defendant. We

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are in a position where we practically have to assume that they are similar to the reasons in Aiello --

THE COURT: As I read Aiello, they don't have to give me reasons.

MS. WALSTER: They do have to.

THE COURT: The mere fact of this provision doesn't pass the ball into the other court. That is the way I read Aiello. If I am correct in that, you have got a very different lawsuit. If I am incorrect in that, then you have got the lawsuit we started out with.

MS.WALSTER: I think the fact that we have no justification here at all, that we have nothing to take --

THE COURT: I understand. That is a reason for telling me I am wrong. That is a reason for you to tell the Court of Appeals to tell me I am wrong, and if you don't succeed in that, go up to the Supreme Court and say, you have got somebody down there that can't read what you people write.

MS. WALSTER: It seems to me slightly different. If the case goes up to the Second Circuit, and I say they didn't have to say a reason, and the Second Circuit says, all right --

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THE COURT: And they say send it back and give a reason --

MS. WALSTER: But then on the basis of those reasons and the relationship of Aiello that --

THE COURT: If the Court of Appeals rules that the defendants have to give a reason for this pregnancy allowance, then I don't think Aiello has changed our case materially.

MS. WALSTER: They give reasons in Aiello. They talk about the policies.

THE COURT: I understand that. I interpret Footnote 20, rightly or wrongly, to mean that you don't have to give any reasons.

MS. WALSTER: Even in Aiello they don't have to say anything?

THE COURT: In Aiello they said a whole lot, and if it hadn't been for Footnote 20, we wouldn't be arguing here. I interpret Footnote 20 as saying to me, the mere fact of pregnancy, the mere fact that pregnant women are treated differently from other women -- I grant you I may be wrong. That is obvious. Not only in this case, but in almost any case.

What I am asking you is, how are you any prejudiced in your effort to show the Court of Appeals

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that I am wrong by not having had depositions? It seems to me you don't need any depositions. I am either right or wrong in the interpretation of that footnote, and I don't see why you need any depositions to make your argument in the Court of Appeals.

MS. WALSTER: In the first place, the footnote isn't the whole case.

THE COURT: I understand. Don't argue the merits. Answer my question.

How are you injured in your ability to convince the Court of Appeals that I am wrong by failure of having had six months of depositions?

B3 MS. WALSTER: The problem that I am concerned with, and I have an equal protection claim here, that is one of the things that differentiates it from the Title 7 case where there isn't necessarily a requirement that there be any immediate -- I mean, if you adhere to your ruling, then they don't have to give any reasons; but in the equal protection area, it's essential that there be some statement of reasons.

THE COURT: Not if it's not a protected class.

MS. WALSTER: Yes.

THE COURT: Why?

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MS. WALSTER: Otherwise it's totally arbitrary. If there is no reason at all, it's totally arbitrary. My problem is in this case, defendants aren't forced to give us some justifications for this policy in terms of it cost too much, and how much does it cost; in terms of the fact that they have decided in their wisdom --

THE COURT: Isee your point, but then you have --

MS.WALSTER: Then we could go up to the Second Circuit, and we could say, "Oh, but I can't decide the effect of Aiello in this case."

THE COURT: You have still got that cause of action. If you have got a cause of action, that is what I call the mini-lawsuit. You have still got that.

If I am right, and I just grant my own motion and the Court of Appeals affirms and the Supreme Court denies certiorari, you have still got that argument. You have just got to rephrase your complaint so as to narrow that argument, and we try that case. If I am wrong, you have got a much bigger case.

MS. WALSTER: I am saying it will take in connection with the equal protection claim, two trips to the Second Circuit.

THE COURT: It won't take two trips. You

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don't need two trips to the Court of Appeals to show that if you are making a wholly arbitrary distinction against a group of people, you have got an equal protection case.

The Court of Appeals doesn't need to tell me that.

MS. WALSTER: But once they do come forward with whatever justifications they have, certainly they wouldn't be precluded from a remand, I assume.

THE COURT: No, no, that case you have got whatever the Court of Appeals does and whatever I do, but that case you don't want to try. You obviously don't want to try that case if you have got a prima facie case under Title 7. You can try it under Title 7. You can throw it in for connection.

But I don't see, and nothing you have said makes me think that on the issue of whether I interpret Footnote 20 or not, you are in any way better off after six months of depositions then you are right now to make that argument, to make the argument you have just made to me, and in that you may be right for all I know. I am far from saying it's an unreasonable argument. I just think that the scales tip the other way. What I think, as I said to start out with, that judicial housekeeping requires that we get this question settled in fixing the

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class, to know the answer to this. For example, how am I going to fix the class if I am not sure of the answer to this question?

MS. WALSTER: Well, I can't think of any other argument except the one that I propose.

THE COURT: Is there anybody else that wants to say anything more? If so, I will take a recess, because I have some people that are waiting. Would you like to consider whether to take a recess? We will take a 15-minute recess and I will deal with the other matters, and then you can think if there is anything further.

(Recess)

MS. O'MELVENY: Your Honor, the plaintiffs' attorneys have discussed the procedural status of your possible ruling, and it is our feeling that in the interests of saving the Court's time, and certainly the time of the many lawyers that seem to be involved in all these cases, if you do decide adversely to us on your interpretation of Footnote 20, we would like to propose that in certifying it up, we have the opportunity to submit, perhaps by next week at this time, possible questions to be considered by the Court, in view of the fact that there are so many ramifications.

THE COURT: I was going to ask that.

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MS. O'MELVENY: All right, so I think that at least on the procedural step, if you feel unpersuaded --

THE COURT: As of the moment I do still feel unpersuaded. What I propose, if in writing my opinion, beginning to write my opinion, I persuade myself the other way, what I propose to do is within the next week try to get an opinion out, and I won't publish it until I hear from you, because I was going to invite your views as to what should be certified, and will you circulate them among defense attorneys, whatever you suggest?

MS. O'MELVENY: So you would like us to do that by a week from today?

THE COURT: Right. As soon as you can. I am leaving on the 30th or the 1st of August, so as soon as you can, do it.

MS. O'MELVENY: Certainly by the middle of next week.

THE COURT: All right, thank you very much.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; ESTHER SKIPPER, Individually and on Behalf of All Similarly Situated Non-Supervisory Female Employees of American Telephone and Telegraph Company Long Lines Department, Plaintiffs, - against - AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT, Defendants.	73 Civ. 3353
WOMEN IN CITY GOVERNMENT UNITED, et al., Plaintiffs, - against - THE CITY OF NEW YORK, et al., Defendants.	74 Civ. 304

O P I N I O N

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KNAPP, D.J.

The complaints in these unrelated class actions make quite similar allegations. They each allege inter alia that the several defendants have, in the treatment of pregnant employees, violated the proscription against discrimination on the basis of sex contained in Title VII of the Civil Rights Act of 1964.

Paragraph 7 of the CWA complaint alleges in part:

> "the defendant has promulgated and maintained policies * * * which limit the employment opportunities of its females employees because of sex by failing and refusing to provide equal rights, benefits and privileges to females under temporary disability due to pregnancy or childbirth or complications arising therefrom, as are made available to its male employees under temporary disability."

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Paragraph 51 of the WICGU complaint (plaintiffs' first cause of action) alleges:

> "Defendants * * * have * * * discriminated against the plaintiffs in this action in the terms and conditions of employment because of sex, in that the health and hospitalization insurance plans negotiated and approved by defendant * * * offer substantially fewer benefits for pregnancy and pregnancy-related conditions than for other medical and surgical problems requiring hospital and medical care."

The remaining ten causes of action alleged in the WICGU complaint may fairly be characterized as variations on the theme of paragraph 51, the differences being in the particular defendant named and the type of policy attacked - health and hospitalization insurance or disability benefit.

Motions were argued before me in both cases on May 21, 1974. In CWA the motions concerned class action treatment. In WICGU the major motion had to do with exhaustion of Title VII remedies.

While those motions were sub judice, the Supreme Court decided Geduldig v. Aiello, 42 U.S.L.W. 4905. We then scheduled argument as to whether in light of Aiello - especially footnote 20 of the opinion - this court should sua sponte dismiss the complaints in these actions. Having received briefs and heard argument, we so

dismiss the complaints with leave to replead, and certify a question to the Court of Appeals.

In Aiello the Supreme Court held that California's disability insurance plan which excludes normal pregnancy from coverage does not violate the Equal Protection Clause of the Fourteenth Amendment. Thus, inter alia, the Court observed (at 4908):

> "We cannot agree that the exclusion of this disability from coverage amounts to invidious discrimination under the Equal Protection Clause. California does not discriminate with respect to the persons or groups who are eligible for disability insurance protection under the program."

The Court found legitimate and "wholly non-invidious" California's reasons for not wanting a more comprehensive program - che state's desire to keep the contribution rate low to keep the program self-supporting, and to provide adequate benefits for some disabilities rather than inadequate benefits for all (id). The Court further found "no evidence in the record that the selection of the risks insured by the program worked to discriminate against any definable group or class * * *." (id.)

The footnote (footnote 20) to the sentence just quoted provides - in our view - the key to the Court's decision. It flatly

states that distinctions involving pregnancy do not constitute discrimination because of sex (or gender). In the first paragraph of that footnote the Court, in answer to arguments presented by the dissenting justices, observed:

> "The dissenting opinion to the contrary, this case is thus a far cry from cases like Reed v. Reed, 404 U.S. 71, and Frontiero v. Richardson, 411 U.S. 677, involving discrimination based upon gender as such. The California insurance program does not exclude anyone from benefit eligibility because of gender but merely removes one physical condition - pregnancy - from the list of compensable disabilities. While it is true that only women can become pregnant, it does not follow that every legislative classification concerning pregnancy is a sex-based classification like those considered in Reed, supra, and Frontiero, supra. Normal pregnancy is an objectively identifiable physical condition with unique characteristics. Absent a showing that distinctions involving pregnancy are mere pretext designed to effect an invidious discrimination against the members of one sex or the other, lawmakers are constitutionally free to include or exclude pregnancy from the coverage of legislation such as this on any reasonable basis, just as with respect to any other physical condition."

In the second paragraph, the Court synthesized its position:

> "The lack of identity between the excluded disability and gender as such under this insurance program becomes clear upon the most cursory analysis. The program divides potential recipients into two groups - pregnant women and nonpregnant persons. While the first group is exclusively female, the second includes members of both sexes. The fiscal and actuarial benefits of the program thus accrue to members of both sexes."

At oral argument in the case at bar, counsel for both sets of plaintiffs and counsel for the EEOC as amicus curiae, insistently argued that Aiello is distinguishable on many grounds. The most significant distinction was said to be that the instant cases involve disparate treatment by employers - private as well as municipal - of pregnant women in the workplace, while Aiello involved a social welfare policy created by state legislation. While deference is to be shown to legislative judgments on social welfare matters, the argument goes, no such deference to allegedly discriminatory employers is warranted under Title VII.

The flaw in this argument is that it begs the question. The threshold question is whether disparity of treatment between pregnancy related disabilities and other disabilities can be classified as discrimination because of sex (or gender). If, as footnote 20 seems to suggest, it cannot be so classified, then the further question of whether such disparity is justified - or less justifiable in the employment context than in some other context - can never be reached.

In other words, if the Aiello Court had found that the California scheme did discriminate on the grounds of sex (or gender) but must nevertheless be upheld because of the deference due to California's sovereign right to make choices in methods of providing

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social welfare, the holding would clearly be inapplicable to a case arising under Title VII where no such deference is required. But such, as we read it, was not the holding of the Court. The holding was that California's treatment of pregnancy related disabilities did not in and of itself constitute a discrimination based on sex (or gender). Such a holding precludes relief under Title VII even more clearly than under the Fourteenth Amendment. Under the Amendment it would be open to pregnant women to argue that it was irrational to single them out as a class even if the singling out were not sex related. No such argument is open under Title VII, which deals only with discrimination "because of . . . sex." 42 U.S.C. §2000 e(2)(a)(1).

Plaintiffs get scant help from the cases they cite for the proposition that discrimination on grounds of sex (or gender) means something different when the Fourteenth Amendment is involved than when Title VII comes into play. The cases cited for that proposition are in our view more readily explained by the respective dates of decision than by the rubric under which they were decided. Thus, West Coast Hotel Co. v. Parrish, 300 U.S. 379, upholding protective legislation, was decided in 1937, while Weeks v. Southern Bell Telephone (5th Cir.) 467 F.2d 95, which ruled the opposite way, was decided in 1972. Similarly, Goesaert v. Cleary, 335 U.S. 464, was

decided in 1948. It seems a safe guess that, in light of Frontiero v. Richardson (1973) 411 U.S. 677, Phillips v. Martin Marietta Corp. (1971) 400 U.S. 542, and Sprogis v. United Air Lines (7th Cir. 1971) 444 F.2d 1194, cert. den. 404 U.S. 991, both West Coast Hotel and Goesart would be decided differently today. In brief, Aiello does not represent a retreat from the Court's modern view as to discrimination on grounds of sex (or gender), but - as footnote 20 plainly indicates - a finding that disparity of treatment based on pregnancy does not in and of itself constitute such discrimination. 1/

Having come to this conclusion as to the effect of Aiello, the question arises as to what should be done with these lawsuits

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1/ By way of illustrating the Court's point, a woman's organization (e.g. a woman's club or actresses' workshop) could hardly be taxed with discriminating on grounds of sex (or gender) if its medical insurance policies provided no coverage for pregnancy-related disabilities. However such disparity of treatment of pregnant persons (who, not necessarily relevant so far as concerns the Amendment, happened to be women) might well run afoul of the equal protection demands of the Fourteenth Amendment, if it could be shown to involve state action and not to be economically or otherwise justifiable.

at this stage of the proceedings. A review of the complaints makes two things plain. First, both complaints were obviously drawn for the purpose of invoking the law as declared by the Aiello District Court (before it was reversed) to the effect that pregnancy-related disparity "in and of itself" constituted discrimination on grounds of sex (or gender). Second, if principles of "notice pleading" were to be applied, both complaints could be read as broad enough to permit proof of the type of "invidious discrimination" that would justify relief under either the Fourteenth Amendment or Title VII.

Any one of three courses of actions would therefore seem possible:

(1) The complaints could be construed under the principles of notice pleading and the parties be allowed to proceed to trial, with the result that the question of the correctness of our interpretation of Aiello could be presented to the Court of Appeals on a full trial record.

(2) The complaints could be construed - as the plaintiffs originally intended - to invoke the pre-Aiello law that disparity with respect to pregnancy-related disabilities in and of itself constituted discrimina-

tion on grounds of sex (or gender), and dismissed without leave to replead, thus giving plaintiffs an appeal as of right to the Court of Appeals.

(3) The complaints could be so construed but dismissed with leave to replead, and the question of Aiello's application to the cases at bar certified to the Court of Appeals.

Upon reflection, only the third of these possible courses of action seems appropriate.

If the first possible course were followed, the plaintiff would be in almost an impossible position of having to wage a "two front war", designed to present the Court of Appeals with a record calculated to take advantage of pre-Aiello law that pregnancy-related disparity in and of itself established a prima facie case under Title VII and designed at the same time to establish a fall back position that the particular practices pursued by these defendants - or some of them - were "invidious" and therefore in violation both of Title VII and of the Fourteenth Amendment. It goes without saying that the methods of proof appropriate to these two possible positions are quite disparate.

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Moreover, oral argument on the problems presented by Aiello was devoted in large part to trying to ascertain how, if at all, the Court of Appeals could benefit by having the Aiello question presented to it on a full trial record. Counsel for both sets of plaintiffs and for EEOC as amicus curiae - although exhibiting the advocate's customary reluctance to yield a point - finally conceded that months of pre-trial discovery and weeks of trial would produce no new information which would assist the Court of Appeals in determining what effect, if any, Aiello should have on these lawsuits.

Finally, absent an authoritative determination of Aiello's effect, it would be almost impossible to define the parameters of the appropriate classes and sub-classes. Plaintiffs, in each case, ask in effect for a class including all women of child bearing age. If our interpretation of Aiello be correct it would seem that the class in each suit would have to be confined to women presently pregnant plus those who had actually been denied pregnancy benefits. On the other hand if Aiello be inapplicable, the class might well be much more numerous.

The second possible course (dismissal without leave to replead) would present the Court of Appeals with several basically

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irrelevant questions, such as whether or not plaintiffs had been fairly treated in having their complaints so narrowly construed without an opportunity to replead. Moreover, should the Court affirm the dismissal, plaintiffs might be saddled with wholly unnecessary statute of limitations problems if they then attempted to obtain relief on the theory that defendants, or any of them, had engaged in "invidious" conduct.

We shall therefore follow the third possible course and certify to the Court of Appeals pursuant to 28 U.S.C. §1292(b) the question whether Aiello has established - for the purposes of these actions or either of them - that disparity between the treatment of pregnancy-related and other disabilities does not of itself constitute discrimination on the basis of sex (or gender) within the prohibition either of Title VII or of the Fourteenth Amendment.

We believe that this opinion has demonstrated - and we so certify - that this question is controlling, and one as to which "there is substantial ground for difference of opinion", and that its resolution would "materially advance the ultimate termination of the litigation".

SO ORDERED.

Dated: New York, New York

July 30, 1974.

WHITMAN KNAPP, U.S.D.J.

SUPPLEMENTAL ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO; ESTHER SKIPPER, Individually and on Behalf of All Similarly Situated Non-Supervisory Female Employees of American Telephone and Telegraph Company, Long Lines Department,

Plaintiffs,

-against-

AMERICAN TELEPHONE AND TELEGRAPH COMPANY, LONG LINES DEPARTMENT,

Defendants.

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs,

-against-

THE CITY OF NEW YORK, et al.,

Defendants.

It is hereby ordered that the two letters attached hereto dated July 17, 1974 by the respective counsel for the plaintiffs be made part of the record in this case.

SO ORDERED.

Dated: New York, New York
July 31, 1974.

WHITMAN KNAPP, U.S.D.J.

LETTER FROM MARY K. O'MELVENY
ANNEXED TO SUPPLEMENTAL ORDER

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CABLE ADDRESS
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July 17, 1974

BY HAND

Honorable Whitman Knapp
Judge, United States District Court
Southern District of New York
Foley Square
New York, New York 10007

Re: CWA, Skipper, et al v. American Telephone and Telegraph Co., Long Lines Department
73 Civ. 3353 W.K.

Dear Judge Knapp:

Pursuant to plaintiffs' request at oral argument July 11, 1974 for permission to submit proposed questions to be addressed by the Court in the event of sua sponte dismissal, we have prepared the following list of inquiries which we hope will be considered in the Court's opinion.

Plaintiffs have been authorized by Linda Colvard Dorian, Esq., attorney for the Equal Employment Opportunity Commission, Amicus Curiae, to inform the Court that these suggested questions are those which Amicus also believe to be appropriate for consideration in the event of dismissal and are thus being submitted on behalf of the Commission as well.

1. Does the decision of the Supreme Court in Geduldig v. Aiello, including footnote 20, apply to the private employment relationship governed by Title VII of the Civil Rights Act of 1964, as amended?

2. Does Geduldig v. Aiello mean that Congress is without the power under Title VII to include classifications based upon pregnancy within the area of prohibited sex discrimination in the employment field, absent a showing that such classifications are a pretext for invidious discrimination?

3. The Equal Employment Opportunity Commission has determined, in its Guidelines on Sex Discrimination (29 C.F.R. §1604.10), that an employer's refusal to treat disabilities caused or contributed to by pregnancy the same, for all job-related purposes, as all other temporary disabilities constitutes prohibited sex discrimination in employment. Is this determination entitled to weight in ascertaining the scope of prohibited sex discrimination under Title VII?

4. Does the decision in Geduldig v. Aiello, including footnote 20, mean that where an employer classifies pregnancy in a manner which [illegible] a disparate impact upon the employment status of a defin[illegible]class of female employees, no prima facie sex discriminatio[illegible] Title VII exists?

5. In the absence of an allegation of employer conduct amounting to a "pretext for invidious sex discrimination", is plaintiffs' challenge under Title VII to the defendant's practices and policies concerning pregnancy disabilities foreclosed by Geduldig v. Aiello, despite the fact that such policies have the following impact upon female employees disabled by pregnancy which were not involved in the California insurance program considered by the Supreme Court:

(a) loss of benefits for all disabilities unrelated to pregnancy once maternity leave commences;

(b) loss of basic medical insurance coverage or assumption of insurance premium payments;

(c) loss of service credit in excess of 30 days which affects

(1) pension entitlement;

(2) promotional opportunities;

(3) increased susceptability to layoffs;

(4) future entitlement to disability benefits:

(d) mandatory dates of leave which may not coincide with need or desire to cease full-time employment;

(e) uncertain reinstatement rights which affect

(1) departmental wage progression credit;

(2) loss of all service credit affecting all of the areas set forth in (c)(1) through (4) above;

(f) possible discharge or involuntary termination of employment?

6. In the absence of an allegation of employer conduct amounting to a "pretext for invidious sex discrimination", is plaintiffs' challenge under Title VII to the defendant's practices and policies concerning pregnancy disabilities foreclosed by Geduldig v. Aiello, despite the fact that defendant's disability benefits plan is unlike the California insurance program considered by the Supreme Court in the following respects:

(a) There is no separate, definable or limited "Fund" from which benefits are paid to disabled employees;

(b) In any given year, benefits would be paid to disabled employees despite a great or unusual increase in a presently covered disability category (e.g., infective diseases; accident, poisoning or violence; respiratory diseases);

(c) Defendant's employees do not in any way support or contribute to benefits paid under the disability benefits plan?

7. Are the standards of justification for classifications which have a disparate impact under Title VII (i.e., bona fide occupational qualification or business necessity) more stringent than the 14th Amendment rational basis test applied in Geduldig v. Aiello?

8. What are the components of a cause of action alleging that an employer's classification of pregnancy is a "pretext for invidious discrimination"?

O'MELVENY LETTER

COHN, GLICKSTEIN, LURIE(STRIN & LUBELL (

Hon. Whitman Knapp July 17, 1974

In connection with Question Number 8, plaintiffs have reviewed the proposed questions submitted for the Court's consideration in Women in City Government United, et al v. The City of New York, et al., 74 Civ. 304, also before the Court on the issue of sua sponte dismissal, and are in agreement with the formulation of Questions 2 and 3 dealing with the scope and content of a cause of action involving conduct which is a "pretext for invidious discrimination." Plaintiffs herein similarly urge that consideration of these questions is appropriate in light of the Court's indication at oral argument that an order dismissing plaintiffs' complaint would permit filing an amended complaint alleging that the defendant's treatment of pregnancy disability was a pretext for invidious discrimination, a cause of action remaining under the Court's interpretation of footnote 20. Rather than repeat these proposed Questions herein, plaintiffs desire to indicate their agreement with and adoption of their formulation by Ms. Walster in her submission to you.

Plaintiffs have not addressed themselves to those questions formulated by Ms. Walster concerning issues of Equal Protection under the Fourteenth Amendment insofar as our complaint is limited to a Title VII claim, and does not include an Equal Protection challenge to the defendant's policies and practices concerning pregnancy.

We respectfully urge the Court, in determining the instant sua sponte motion, to consider the above questions for the guidance of plaintiffs and the appellate courts in the event of an unfavorable decision.

Respectfully submitted,

COHN,GLICKSTEIN,LURIE,OSTRIN & LUBELL

By: Mary K. O'Melveny
Mary K. O'Melveny

Attorneys for Plaintiffs

* * *

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ANNEXED TO SUPPLEMENTAL ORDER

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July 17, 1974

Honorable Whitman Knapp
United States District Judge
United States District Court
for the Southern District of New York
Foley Square,
New York, New York

Re: Women in City Government United, et al.,
v. The City of New York, et al.
74 Civ. 304

Dear Judge Knapp:

At the hearing on the court's motion to dismiss the above-entitled action July 11, 1974, plaintiffs' counsel requested permission to submit questions to you which you, in your opinion ordering dismissal, might appropriately address. We respectfully request that you consider the issues framed below in your decision.

At the July 11 hearing, you indicated that the order dismissing plaintiffs' complaint would permit the filing of an amended complaint if plaintiffs were able to allege that defendants' exclusion of disability benefits for pregnancy and pregnancy-related disabilities was adopted as a pretext for sexual discrimination. We urge that your decision provide some guidance and direction as to the requisites for such a "pretext" allegation, and in this regard, we respectfully direct your attention to Questions 1, 2 and 3 below.

WALSTER LETTER

Honorable Whitman Knapp
July 17, 1974

I. Plaintiffs' Constitutional Claim.

1. In alleging denial of equal protection in an employment context for exclusion from disability benefits of pregnancy and pregnancy-related disabilities, must plaintiffs, in order to state a claim upon which relief can be granted, allege that the classification is a "pretext for discrimination" on the basis of sex? (See Gedulding v. Aiello, 42 U.S.L.W. 4905, 4908, fn. 20.)

2. Does the concept of "pretext for discrimination" require an allegation of willfullness, hostile motive or some other element of bad faith?

3. If the concept of "pretext for discrimination" does not necessarily imply bad faith, is "pretext" established, prima facie, if the classification results in a disadvantaged class:

a) which includes all women and only women? e.g., excluding all people with cervixes from disability benefit plans.

b) which includes all women and few men? e.g., in a plant where the office staff is 95% women, and the factory workers are all male, a classification which excludes office workers from disability benefit coverage.

c) which includes both men and women but affects them unequally? e.g., excluding from disability benefits all people under 150 lbs. in weight and 5'8" in height. If such a classification could show pretext, what degree of disparate impact is required before the classification is prima facie impermissible?

d) which includes only women but does not affect them uniformly? e.g., excluding disability benefits for pregnancy and pregnancy-related disabilities.

ONLY COPY AVAILABLE

Honorable Whitman Knapp
July 17, 1974

e) which includes only women and affects nearly all but does not affect them uniformly? e.g., excluding disability benefits for pregnancy, menstrual disorders, breast and uterine cancer, vaginal inflamatory disease, etc.

4. Is an employer who has classified employees as "pregnant women" and "non-pregnant people," and excluded from disability benefits pregnancy and pregnancy-related disabilities, required to establish that such a classification has a "reasonable basis" in the context of accomplishing a legitimate business purpose? (See Aiello, fn. 20.)

II. Plaintiffs' Title VII Claims.

5. Does the decision in Aiello govern actions brought under Title VII of the 1964 Civil Rights Act?

6. Is a prima facie violation of Title VII for discrimination on the basis of sex stated by an allegation of

(a) classification resulting in a disparate impact upon the employment status of a definable group of female employees?

(b) explicit classification by gender?

(c) classification as a "pretext for sex discrimination?"

7. Is the concept "pretext for sex discrimination" the same under both the 14th Amendment and Title VII? (See Questions 2 and 3.)

8. Under Title VII, are the standards of justification for classifications with resulting sexual impact, i.e. bona fide occupational qualification or business necessity, more stringent than the "reasonable basis" test applied in Aiello?

Honorable Whitman Knapp
July 17, 1974

III. Factual Variations from Aiello.

9. Are plaintiffs' challenges under the 14th Amendment or Title VII to the following plans and policies of defendants, none of which was presented in Aiello, foreclosed by that decision in the absence of an allegation of "pretext for sex discrimination?"

(a) disability plans which exclude all disabilities (both normal and pathological) related to pregnancy and maternity;

(b) plans which provide only nominal hospitalization benefits for pregnancy and maternity;

(c) plans which provide restricted health and medical benefits for pregnancy and maternity;

(d) plans which impose mandatory maternity leaves on pregnant employees and which

(i) preclude an employee from utilizing accrued annual or sick leave, and

(ii) interrupt the continuity of employment for seniority, promotion and raises, and

(iii) trigger disqualifications from other fringe benefit programs.

10. Would the Aiello rule apply to a Title VII or 14th Amendment claim based upon exclusion of disabilities relating to breast and uterine cancer, or to disabilities resulting from sickle cell anemia? If not, is there a distinction between classifications based upon those conditions and one based upon disabilities resulting from pregnancy?

Respectfully submitted,

RABINOWITZ, BOUDIN & STANDARD

By: K. Randlett Walster
K. Randlett Walster

krw:mb

* * *

ORDER

OF THE DISTRICT COURT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated, Plaintiffs, -against- THE CITY OF NEW YORK: ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND, Defendants.	O R D E R 74 CIV. 304 (W.K.)

Order

AN OPINION AND ORDER having been entered on July 30, 1974, dismissing plaintiffs' complaint with leave to amend; and the Court of Appeals for the Second Circuit by an Order entered October 2, 1974, having denied plaintiffs' petition for leave to appeal; and plaintiffs having notified this Court by letter dated October 9, 1974, of their election not to amend their complaint, it is

O R D E R E D that plaintiffs' complaint be and the same hereby is dismissed with prejudice.

Dated: New York, New York
October 10, 1974

/s/ WK

WHITMAN KNAPP
U. S. D. J.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

WOMEN IN CITY GOVERNMENT UNITED, BARBARA ROBERTSON, LESLIE BOYARSKY, JACQUELIN GROSS, ARLENE FRIEDMAN, ROBERT SUSSMAN, ALICIA CANTELMI, PAMELA MILLS, SUSAN PASS, LINDA ZISES, EMILY BLITZ, SUSAN PADWEE, ELAINE JUSTIC, EULA CARTER, and LINDA SHAH, on behalf of themselves and others similarly situated,

Plaintiffs-Appellants.

- against -

74 CIV. 304 (WK)

THE CITY OF NEW YORK; ABRAHAM BEAME as MAYOR OF THE CITY OF NEW YORK; JOHN V. LINDSAY; HARRY BRONSTEIN, as CITY PERSONNEL DIRECTOR; NEW YORK CITY HEALTH AND HOSPITALS CORPORATION; NEW YORK CITY HOUSING AUTHORITY; NEW YORK CITY OFF-TRACK BETTING CORPORATION; JOSEPH MONSERRAT, SEYMOUR P. LACHMAN, ISAIAH E. ROBINSON, JR., MARY E. MEADE, Constituting the BOARD OF EDUCATION OF THE CITY OF NEW YORK; ASSOCIATED HOSPITAL SERVICE, INC.; GROUP HEALTH INCORPORATED; UNITED MEDICAL SERVICE, INC.; SOCIAL SERVICES EMPLOYEES UNION; SOCIAL SERVICES EMPLOYEES UNION WELFARE FUND; DISTRICT COUNCIL 37, AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES; DISTRICT COUNCIL 37 HEALTH & SECURITY PLAN; UNITED FEDERATION OF TEACHERS; and UNITED FEDERATION OF TEACHERS WELFARE FUND,

NOTICE OF APPEAL

Defendants-Appellees.

----------x

S I R S :

NOTICE IS HEREBY GIVEN that plaintiffs Women in City Government United, et al. above named, hereby appeal

Notice of Appeal

to the United States Court of Appeals for the Second Circuit from the final judgment entered in this action on the 10th day of October, 1974.

Dated: New York, New York
October 10, 1974.

Yours, etc.

/s/ Robert Stolz

RABINOWITZ, BOUDIN & STANDARD
Attorneys for Plaintiffs
30 East 42nd Street
New York, New York 10017

TO:

Mirkin, Barre, Saltzstein & Gordon, P.C.
Attorneys for Defendants
Social Service Employees Union Local 371
Social Service Employees Union Local 371
Welfare Fund
98 Cutter Mill Road
Great Neck, New York 11021

The Corporation Counsel of the City of New York
Attorney for Defendants,
The City of New York, Abraham Beame, Harry Bronstein, New York City Health and Hospitals Corporation, New York City Off-Track Betting Corporation, Joseph Monserrat, Seymour P. Lachman, Isaiah E. Robinson, Jr., Mary E. Meade
Municipal Building
New York, New York 10007

Edward L. Johnson, Esq.
New York City Housing Authority
Attorney for Defendant,
New York City Housing Authority
250 Broadway
New York, New York

Notice of Appeal

Breed, Abbott & Morgan, Esqs.
Attorneys for Defendants,
Associated Hospital Service, Inc.
United Medical Service, Inc.
1 Chase Manhattan Plaza
New York, New York 10005

Trubin, Sillcocks, Edelman & Knapp, Esqs.
Attorneys for Defendant
Group Health Incorporated
375 Park Avenue
New York, New York 10022

Bertram Perkel, Esq.
150 East 58th Street, Suite 2610
New York, New York 10022
Attorney for Defendants
District Council 37
District Council 37 Health & Security Plan

Delson and Gordon
Attorneys for Defendants
United Federation of Teachers
United Federation of Teachers Welfare Fund
230 Park Avenue
New York, New York

Julius Topol, Esq.
Attorney for Defendant,
District Council 37
140 Park Place
New York, New York 10007

C 375—Affidavit of Personal Service of Papers on Individual.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket
~~Index~~ No. 74-2352

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs-
Appellants

against

THE CITY OF NEW YORK, et al.,

Defendants-
Appellees

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

MICHAEL S. MARTIN being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
3 South Cottage St., Valley Stream, N.Y. 11580

That on the 31st day of December 1974 at 98 Cutter Mill Road, Great Neck, N.Y. 11021

deponent served the annexed Appendix on Appeal upon Mirkin, Barre, Saltzstein & Gordon, P.C., attorneys for Defts.-Appellees Social Service Employees Union Local 371 and Social Service Employees Union Local 371 Welfare Fund

~~the~~ in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the said attorneys herein,

Sworn to before me, this 31st day of December 19 74

George Cohen

GEORGE COHEN
Notary Public, State of New York
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1975

Michael S. Martin

Print name beneath signature

MICHAEL S. MARTIN

C 375— Affidavit of Personal Service of Papers on Individual.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74-2352

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs-Appellants

against

THE CITY OF NEW YORK, et al.,

Defendants-Appellees

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

MARCEL DIAZ being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 1404 Putnam Avenue, Brooklyn, N.Y. 11227

That on the 30th day of December 19 74 at 1 Chase Manhattan Plaza, New York, New York 10005

deponent served the annexed Appendix on Appeal upon Breed, Abbott & Morgan, Esqs., Attorneys for Defendants-Appellees Associated Hospital Service, Inc. and United Medical Service, Inc.

~~the~~ in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the said attorneys herein,

Sworn to before me, this 30th day of December 19 74.

GEORGE COHEN
Notary Public, State of New York
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1975

Marcel Diaz

Print name beneath signature

MARCEL DIAZ

C 375—Affidavit of Personal Service of Papers on Individual.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74-2352

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs-Appellants

against

THE CITY OF NEW YORK, et al.,

Defendants-Appellees

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

MARCEL DIAZ being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 1404 Putnam Avenue, Brooklyn, N.Y. 11227

That on the 30th day of December 19 74 at 375 Park Avenue, New York, New York 10022

deponent served the annexed Appendix on Appeal upon Trubin, Sillcocks, Edelman & Knapp, Esqs., Attorneys for Defendant-Appellee, Group Health Incorporated

the ~~Hex~~ in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the said attorneys herein,

Sworn to before me, this 30th day of December 19 74.

GEORGE COHEN
Notary Public, State of New York
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1975

Marcel Diaz

Print name beneath signature

MARCEL DIAZ

C 375—Affidavit of Personal Service of Papers on Individual.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket
~~Index~~ No. 74-2352

WOMEN IN CITY GOVERNMENT UNITED, et al.,

*Plaintiff*s-
Appellants

against

THE CITY OF NEW YORK, et al.,

*Defendant*s-
Appellees

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

MARCEL DIAZ *being duly sworn,*

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1404 Putnam Ave., Brooklyn, N.Y. 11227

That on the 31st *day of* December *19*74 *at* ~~[illegible]~~ 409 West 21st Street, New York, N.Y.

deponent served the annexed Appendix on Appeal *upon*
Bertram Perkel, Esq., Attorney for Defendants-Appellees District Council 37 and District Council 37 Health & Security Plan

~~the~~ *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* said attorney *herein,*

Sworn to before me, this 31st
day of December 19~~7~~4

GEORGE COHEN
Notary Public, State of New York
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1975

Marcel Diaz

Print name beneath signature
MARCEL DIAZ

C 375—Affidavit of Personal Service of Papers on Individual. ✓

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket ~~Index~~ No. 74-2352

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs-Appellants

against

THE CITY OF NEW YORK, et al.,

Defendants-Appellees

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

MARCEL DIAZ *being duly sworn,*

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
1404 Putnam Avenue, Brooklyn, N.Y. 11227

That on the 30th *day of* December *19* 74 *at* 140 Park Place, New York, New York 10007

deponent served the annexed Appendix on Appeal *upon*

Julius Topol, Esq., Attorney for Defendant-Appellee District Council 37

~~the~~ *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* said attorney *herein,*

Sworn to before me, this 30th *day of* December

GEORGE COHEN
Notary Public, State of New York
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1975

Marcel Diaz

Print name beneath signature

MARCEL DIAZ

C 375—Affidavit of Personal Service of Papers on Individual.

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74-2352

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs-Appellants

against

THE CITY OF NEW YORK, et al.,

Defendants-Appellees

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

MICHAEL DIAZ being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1404 Putnam Avenue, Brooklyn, N.Y. 11227

That on the 30th day of December 19 74 at 230 Park Avenue, New York, New York

deponent served the annexed Appendix on Appeal upon Delson and Gordon, Attorneys for Defendants-Appellees United Federation of Teachers and United Federation of Teachers Welfare Fund

~~the~~ in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the said attorneys herein,

Sworn to before me, this 30th day of December 19 74

GEORGE COHEN
Notary Public, State of New York
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1975

Marcel Diaz
Print name beneath signature

MARCEL DIAZ

C 375—Affidavit of Personal Service of Papers on Individual.

JULIUS BLUMBERG INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT BROADWAY, NEW YORK

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket
~~Index~~ No. 74-2352

WOMEN IN CITY GOVERNMENT UNITED, et al.,

Plaintiffs-
Appellants

against

THE CITY OF NEW YORK, et al.,

Defendants-
Appellees

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

M. Brodkin, *being duly sworn,*

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at

1414 East 12 St., Brooklyn, N.Y. 11230

That on the 30th *day of* December *19* 74 *at* New York City Housing Authority (6th fl. Legal Dept. Recp. Desk), 250 Broadway, New York, N.Y.

deponent served the annexed Appendix on Appeal *upon*

Edward L. Norton, Esq., attorney for Defendant-Appellee New York City Housing Authority

~~the~~ *in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* said attorney *herein,*

Sworn to before me, this 30th *day of* December *19* 74

GEORGE COHEN
Notary Public, State of New York
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1975

M Brodkin
Print name beneath signature

M. Brodkin

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

- X

WOMEN IN CITY GOVERNMENT UNITED, et al.,	:	Docket No. 74-2352
Plaintiffs-Appellants	:	
-against-	:	
THE CITY OF NEW YORK, et al.,	:	AFFIDAVIT OF PERSONAL SERVICE
Defendants-Appellees.	:	

- X

STATE OF NEW YORK, COUNTY OF NEW YORK : SS.:

MARCEL DIAZ, being duly sworn, deposes and says that deponent is not a party to the action, is over 18 years of age and resides at 1404 Putnam Avenue, Brooklyn, N. Y. 11227. That on the 30th day of December, 1974 at the Municipal Building, New York, N. Y. 10007 deponent served the annexed Appendix on Appeal upon The Corporation Counsel of the City of New York, attorney for defendants-appellees The City of New York, Abraham Beame, Harry Bronstein, New York City Health and Hospitals Corporation, New York City Off-Track Betting Corporation, Joseph Monserrat, Seymour P. Lachman, Isaiah E. Robinson, Jr., and Mary E. Meade in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the said attorney herein.

Sworn to before me, this
30th day of December, 1974.

Marcel Diaz
MARCEL DIAZ

George Cohen

GEORGE COHEN
Notary Public, State of New York
No. 31-0682100
Qualified in New York County
Commission Expires March 30, 1975